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TITLE 26

TAXATION

(CHAPTERS 1-33 IN VOLUME 26A; CHAPTERS 34-51 IN VOLUME 26B; CHAPTERS 58-82 IN VOLUME 27B)

SUBTITLE 5. STATE TAXES

CHAPTER.

SUBTITLE 5. STATE TAXES

CHAPTER 52

GROSS RECEIPTS TAX

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

Effective Dates. Acts 2009, No. 384, § 15: Mar. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law require amendment to provide consistency with the Streamlined Sales and Use Tax Agreement, that a withdrawal from stock is subject to gross receipts tax under current law, that clarification is needed to ensure that the original legislative intent is fulfilled, and that this act is immediately necessary to prevent possible confusion among the taxpayers of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1)

The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1164, § 4: Oct. 1, 2013. Effective date clause provided: "Sections 1 through 3 of this act are effective on the first day of the calendar quarter following the effective date of this act."

26-52-103. Definitions. [Effective until October 1, 2013.]

As used in this chapter:

(1) "Alcoholic beverage" means a beverage that is suitable for human consumption and contains five-tenths of one percent (0.5%) or more of alcohol by volume;

(2)(A) "Bundled transaction" means a retail sale of two (2) or more products, except real property and services to real property, in which:

(i) The products are otherwise distinct and identifiable; and

(ii) The products are sold for one (1) nonitemized price.

(B) "Bundled transaction" does not include the sale of any product in which the sales price varies or is negotiable based on the selection by the purchaser of the products included in the transaction.

(C) The Department of Finance and Administration shall promulgate rules to implement this subdivision (2);

(3)(A) "Consumer", "purchaser", or "user" means the person to whom the taxable sale is made or to whom taxable services are furnished.

(B) All contractors are deemed to be consumers or users of all tangible personal property, including materials, supplies, and equipment used or consumed by them in performing any contract.

(C) The sales of all such tangible personal property to contractors are taxable sales within the meaning of this chapter;

(4) "Contract" means any agreement or undertaking to construct, manage, or supervise the construction, erection, alteration, or repair of any building or other improvement or structure affixed to real estate, including any of their component parts;

(5) "Contractor" means any person who contracts or undertakes to construct, manage, or supervise the construction, erection, alteration, or repair of any building or other improvement or structure affixed to real estate, including any of their component parts;

(6)(A) "Delivery charge" means a charge by a seller of tangible personal property or services for preparation and delivery to a location designated by the purchaser of the tangible personal property or services, including without limitation transportation, shipping, postage, handling, crating, and packing.

(B) If a shipment includes tax-exempt property and taxable property, the seller shall pay the tax imposed by this chapter only on the percentage of the delivery charge allocated to the taxable property by using:

(i) A percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or

(ii) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment;

(7) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subdivision (7)(A) and is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(B) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36, as in effect on January 1, 2007;

(8)(A) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients.

(B) "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material.

(C) "Direct mail" does not include multiple items of printed material delivered to a single address;

(9) "Director" means the Director of the Department of Finance and Administration or any of his or her authorized agents;

(10)(A) "Doing business" or "engaging in business" includes any and all local activity regularly and persistently pursued by any seller or vendor through agents, employees, or representatives with the object of gain, profit, or advantage and that results in a sale, delivery, or the transfer of the physical position of any tangible personal property by the vendor to the vendee at or from any point within Arkansas, whether from warehouse, store, office, storage point, rolling store, motor vehicle, delivery conveyance, or by any method or device under the control of the seller effecting such a local delivery without regard to the terms of sale with respect to point of acceptance of the order, point of payment, or any other condition.

(B) As set out in this subdivision (10), "doing business" or "engaging in business" is equally applicable to sellers of services as are made the subject matter of the tax imposed by this chapter.

(C)(i) The provisions of this subdivision (10) shall be cumulative to the gross receipts tax law and shall not be construed as levying a tax on any receipts derived from personal or professional services not before made the subject matter and within the scope of the present gross receipts tax law, as amended.

(ii) The provisions of this subdivision (10)(C) shall not be construed as repealing or modifying any of the provisions therein;

(11) "Established business" means any business operated or conducted by any person in a continuous manner for any length of time from an established place or in an established manner;

(12)(A) "Food" and "food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(B) "Food" and "food ingredients" do not include an alcoholic beverage, tobacco, or a dietary supplement;

(13)(A) "Gross receipts", "gross proceeds", or "sales price" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, any loss, any cost of transportation to the seller, any tax imposed on the seller, and any other expense of the seller;

(iii) Any charge by the seller for any service necessary to complete the sale, other than a delivery charge or an installation charge;

(iv) Delivery charge;

(v)*(a)* Installation charge.

(b) Installation charges will not be included in the "gross receipts", "gross proceeds", or "sales price" if they are not a specifically taxable service under this chapter or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and the installation charges have been separately stated on the invoice, billing, or similar document given to the purchaser; or

(vi) Credit for any trade-in.

(B) "Gross receipts", "gross proceeds", or "sales price" does not include:

(i) A discount including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, or a carrying charge from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iii) Any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(14) "Motor vehicle" means a vehicle that is self-propelled and is required to be registered for use on the highway;

(15)(A)(i) "Lease" or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.

(ii) A lease or rental may include future options to purchase or extend.

(B) "Lease" or "rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments; or

(iii)*(a)* Providing tangible personal property along with an operator for a fixed or indeterminate period of time.

(b) A condition of this exclusion in this subdivision (15)(B)(iii) is that the operator is necessary for the equipment to perform as designed.

(c) For the purpose of this subdivision (15)(B)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(C) "Lease" or "rental" does include agreements covering motor vehicles and trailers if the amount of consideration may be increased or decreased by reference to the amount realized upon the sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(2), as in effect on January 1, 2007.

(D) This definition of "lease" or "rental" shall:

(i) Be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code of 1986, as in effect on January 1, 2007, the Uniform Commercial Code, § 4-1-101 et seq., or another federal, state, or local law;

(ii) Be applied only prospectively from January 1, 2008, and shall have no retroactive impact on existing leases or rentals; and

(iii) Impact neither any existing sale-leaseback exemption nor exclusion;

(16) "Person" includes any individual, partnership, limited liability company, limited liability partnership, corporation, estate, trust, fiduciary, or any other legal entity;

(17) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(C)(i) Food sold with an eating utensil provided by the seller, including a plate, knife, fork, spoon, glass, cup, napkin, or straw.

(ii) As used in subdivision (17)(C)(i) of this section, "plate" does not include a container or packaging used to transport the food;

(18) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;

(19)(A) "Sale" means the transfer of either the title or possession except in the case of a lease or rental for a valuable consideration of tangible personal property regardless of the manner, method, instrumentality, or device by which the transfer is accomplished.

(B) "Sale" includes the:

(i) Exchange, barter, lease, or rental of tangible personal property; or

(ii) Sale, exchanging, or other disposition of admissions, dues, or fees to clubs, to places of amusement, or to recreational or athletic events or for the privilege of having access to or the use of amusement, athletic, or entertainment facilities.

(C) "Sale" does not include the:

(i) Furnishing or rendering of services except as otherwise provided in this section; or

(ii) Transfer of title to a vehicle by the vehicle owner to an insurance company as a result of the settlement of a claim for damages to the vehicle.

(D)(i) In the case of a lease or rental of tangible personal property, including motor vehicles and trailers for less than thirty (30) days, the tax shall be paid on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental regardless of whether Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property.

(ii) In the case of a lease or rental of tangible personal property, including motor vehicles and trailers for thirty (30) days or more, the tax shall be paid on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental unless Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property;

(20) "Seller" means every person making a sale, lease, or rental of tangible personal property or services;

(21)(A) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses.

(B) "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;

(22) "Tax period" or "taxable period" means either the calendar period or the taxpayer's fiscal period when a taxpayer has obtained a permit from the director or from any of his or her authorized agents to use a fiscal period in lieu of a calendar period;

(23) "Taxpayer" means any person liable to remit a tax under this chapter or to make a report for the purpose of claiming any exemption from payment of a tax levied by this chapter; and

(24) "Tobacco" means a cigarette, cigar, chewing or pipe tobacco, or any other item that contains tobacco.

History. Acts 1941, No. 386, § 2; 1953, No. 387, §§ 1, 2; 1965, No. 181, § 1; 1977, No. 340, § 1; A.S.A. 1947, §§ 84-1902, 84-1902.1, 84-1902.1n; Acts 1987 (1st Ex. Sess.), No. 13, § 1; 1989, No. 510, § 5; 1995, No. 835, § 1; 1995, No. 1160, § 21; 1997, No. 1076, § 1; 1997, No. 1266, § 1; 1999, No. 1220, § 1; 2003, No. 599, § 1; 2003, No. 1273, § 4; 2007, No. 154, §§ 1, 2; 2007, No. 181, § 11; 2007, No. 550, §§ 1, 2; 2009, No. 384, §§ 1, 2; 2009, No. 655, § 10.

Amendments. The 2009 amendment by No. 384 deleted (13)(A)(vi), redesignated the subsequent subdivision accordingly, and made related changes; and added present (14).

The 2009 amendment by No. 655, in (15)(D)(i), deleted "as in effect on January 1, 2007" following "§ 4-1-101 et. seq.," and made related and minor stylistic changes.

Effective Dates. Acts 2007, No. 154, § 7, provided: "Effective Date. Sections 1-6 of this act shall be effective on the first day of the calendar month following the effective date of this act."

Acts 2007, No. 181, § 1: Jan. 1, 2008, by its own terms.

CASE NOTES

Taxpayer.

Lender was not entitled to bad-debt refunds, under § 26-52-309, of sales taxes paid on defaulted consumer credit accounts with retailers because: (1) the retailer, not the lender, was the "taxpayer" under § 26-52-309; and (2) the lender was not entitled to such refunds as an assignee of the retailer, as the Gross Receipts Act did not include "assignee" in the definition of a "taxpayer." Citifinancial Retail Servs. Div. of Citicorp Trust Bank, Fsb v. Weiss, 372 Ark. 128, 271 S.W.3d 494 (2008).

26-52-103. Definitions. [Effective October 1, 2013.]

As used in this chapter:

(1) "Alcoholic beverage" means a beverage that is suitable for human consumption and contains five-tenths of one percent (0.5%) or more of alcohol by volume;

(2)(A) "Bundled transaction" means a retail sale of two (2) or more products, except real property and services to real property, in which:

(i) The products are otherwise distinct and identifiable; and

(ii) The products are sold for one (1) nonitemized price.

(B) "Bundled transaction" does not include the sale of any product in which the sales price varies or is negotiable based on the selection by the purchaser of the products included in the transaction.

(C) The Department of Finance and Administration shall promulgate rules to implement this subdivision (2);

(3)(A) "Consumer", "purchaser", or "user" means the person to whom the taxable sale is made or to whom taxable services are furnished.

(B) All contractors are deemed to be consumers or users of all tangible personal property, including materials, supplies, and equipment used or consumed by them in performing any contract.

(C) The sales of all such tangible personal property to contractors are taxable sales within the meaning of this chapter;

(4) "Contract" means any agreement or undertaking to construct, manage, or supervise the construction, erection, alteration, or repair of

any building or other improvement or structure affixed to real estate, including any of their component parts;

(5) "Contractor" means any person who contracts or undertakes to construct, manage, or supervise the construction, erection, alteration, or repair of any building or other improvement or structure affixed to real estate, including any of their component parts;

(6)(A) "Delivery charge" means a charge by a seller of tangible personal property or services for preparation and delivery to a location designated by the purchaser of the tangible personal property or services, including without limitation transportation, shipping, postage, handling, crating, and packing.

(B) If a shipment includes tax-exempt property and taxable property, the seller shall pay the tax imposed by this chapter only on the percentage of the delivery charge allocated to the taxable property by using:

(i) A percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or

(ii) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment;

(7) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subdivision (7)(A) and is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(B) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36, as in effect on January 1, 2007;

(8)(A) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients.

(B) "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material.

(C) "Direct mail" does not include multiple items of printed material delivered to a single address;

(9) "Director" means the Director of the Department of Finance and Administration or any of his or her authorized agents;

(10)(A) "Doing business" or "engaging in business" includes any and all local activity regularly and persistently pursued by any seller or vendor through agents, employees, or representatives with the object of gain, profit, or advantage and that results in a sale, delivery, or the transfer of the physical position of any tangible personal property by the vendor to the vendee at or from any point within Arkansas, whether from warehouse, store, office, storage point, rolling store, motor vehicle, delivery conveyance, or by any method or device under the control of the seller effecting such a local delivery without regard to the terms of sale with respect to point of acceptance of the order, point of payment, or any other condition.

(B) As set out in this subdivision (10), "doing business" or "engaging in business" is equally applicable to sellers of services as are made the subject matter of the tax imposed by this chapter.

(C)(i) The provisions of this subdivision (10) shall be cumulative to the gross receipts tax law and shall not be construed as levying a tax on any receipts derived from personal or professional services not before made the subject matter and within the scope of the present gross receipts tax law, as amended.

(ii) The provisions of this subdivision (10)(C) shall not be construed as repealing or modifying any of the provisions therein;

(11) "Established business" means any business operated or conducted by any person in a continuous manner for any length of time from an established place or in an established manner;

(12)(A) "Food" and "food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(B) "Food" and "food ingredients" do not include an alcoholic beverage, tobacco, or a dietary supplement;

(13)(A) "Gross receipts", "gross proceeds", or "sales price" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, any loss, any cost of transportation to the seller, any tax imposed on the seller, and any other expense of the seller;

(iii) Any charge by the seller for any service necessary to complete the sale, other than a delivery charge or an installation charge;

(iv) Delivery charge;

(v)*(a)* Installation charge.

(b) Installation charges will not be included in the "gross receipts", "gross proceeds", or "sales price" if they are not a specifically taxable service under this chapter or the Arkansas Compensating Tax Act of

1949, § 26-53-101 et seq., and the installation charges have been separately stated on the invoice, billing, or similar document given to the purchaser; or

(vi) Credit for any trade-in.

(B) "Gross receipts", "gross proceeds", or "sales price" does not include:

(i) A discount including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, or a carrying charge from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iii) Any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(14) "Motor vehicle" means a vehicle that is self-propelled and is required to be registered for use on the highway;

(15)(A)(i) "Lease" or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.

(ii) A lease or rental may include future options to purchase or extend.

(B) "Lease" or "rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments; or

(iii)*(a)* Providing tangible personal property along with an operator for a fixed or indeterminate period of time.

(b) A condition of this exclusion in this subdivision (15)(B)(iii) is that the operator is necessary for the equipment to perform as designed.

(c) For the purpose of this subdivision (15)(B)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(C) "Lease" or "rental" does include agreements covering motor vehicles and trailers if the amount of consideration may be increased or decreased by reference to the amount realized upon the sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(2), as in effect on January 1, 2007.

(D) This definition of "lease" or "rental" shall:

(i) Be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally

accepted accounting principles, the Internal Revenue Code of 1986, as in effect on January 1, 2007, the Uniform Commercial Code, § 4-1-101 et seq., or another federal, state, or local law;

(ii) Be applied only prospectively from January 1, 2008, and shall have no retroactive impact on existing leases or rentals; and

(iii) Impact neither any existing sale-leaseback exemption nor exclusion;

(16) "Person" includes any individual, partnership, limited liability company, limited liability partnership, corporation, estate, trust, fiduciary, or any other legal entity;

(17) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(C)(i) Food sold with an eating utensil provided by the seller, including a plate, knife, fork, spoon, glass, cup, napkin, or straw.

(ii) As used in subdivision (17)(C)(i) of this section, "plate" does not include a container or packaging used to transport the food;

(18) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;

(19)(A) "Sale" means the transfer of either the title or possession except in the case of a lease or rental for a valuable consideration of tangible personal property regardless of the manner, method, instrumentality, or device by which the transfer is accomplished.

(B) "Sale" includes the:

(i) Exchange, barter, lease, or rental of tangible personal property; or

(ii) Sale, exchanging, or other disposition of admissions, dues, or fees to clubs, to places of amusement, or to recreational or athletic events or for the privilege of having access to or the use of amusement, athletic, or entertainment facilities.

(C) "Sale" does not include the:

(i) Furnishing or rendering of services except as otherwise provided in this section; or

(ii) Transfer of title to a vehicle by the vehicle owner to an insurance company as a result of the settlement of a claim for damages to the vehicle.

(D)(i) In the case of a lease or rental of tangible personal property, including motor vehicles and trailers for less than thirty (30) days, the tax shall be paid on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental regardless of whether Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property.

(ii)*(a)* Except as provided in subdivision (19)(D)(ii)*(b)* of this section, in the case of a lease or rental of tangible personal property for thirty (30) days or more, the tax shall be paid on the basis of rental or lease payments made to the lessor of the tangible personal

property during the term of the lease or rental unless Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property.

(b) In the case of a lease or rental of a motor vehicle for thirty (30) days or more, the tax shall be paid on the basis of rental or lease payments made to the lessor of the motor vehicle during the term of the lease or rental;

(20) "Seller" means every person making a sale, lease, or rental of tangible personal property or services;

(21)(A) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses.

(B) "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;

(22) "Tax period" or "taxable period" means either the calendar period or the taxpayer's fiscal period when a taxpayer has obtained a permit from the director or from any of his or her authorized agents to use a fiscal period in lieu of a calendar period;

(23) "Taxpayer" means any person liable to remit a tax under this chapter or to make a report for the purpose of claiming any exemption from payment of a tax levied by this chapter; and

(24) "Tobacco" means a cigarette, cigar, chewing or pipe tobacco, or any other item that contains tobacco.

History. Acts 1941, No. 386, § 2; 1953, No. 387, §§ 1, 2; 1965, No. 181, § 1; 1977, No. 340, § 1; A.S.A. 1947, §§ 84-1902, 84-1902.1, 84-1902.1n; Acts 1987 (1st Ex. Sess.), No. 13, § 1; 1989, No. 510, § 5; 1995, No. 835, § 1; 1995, No. 1160, § 21; 1997, No. 1076, § 1; 1997, No. 1266, § 1; 1999, No. 1220, § 1; 2003, No. 599, § 1; 2003, No. 1273, § 4; 2007, No. 154, §§ 1, 2; 2007, No. 181, § 11; 2007, No. 550, §§ 1, 2; 2009, No. 384, §§ 1, 2; 2009, No. 655, § 10; 2013, No. 1164, § 1.

Amendments. The 2009 amendment by No. 384 deleted (13)(A)(vi), redesignated the subsequent subdivision accordingly, and made related changes; and added present (14).

The 2009 amendment by No. 655, in (15)(D)(i), deleted "as in effect on January 1, 2007" following "§ 4-1-101 et. seq.," and made related and minor stylistic changes.

The 2013 amendment subdivided (19)(D)(ii); in present (19)(D)(ii)*(a)*, substituted "Except as provided in subdivision (19)(D)(ii)*(b)* of this section, in" for "In" at the beginning of the sentence, deleted "including motor vehicles and trailers" before "thirty (30) days," and added (19)(D)(ii)*(b)*.

Effective Dates. Acts 2007, No. 154, § 7, provided: "Effective Date. Sections 1-6 of this act shall be effective on the first day of the calendar month following the effective date of this act."

Acts 2007, No. 181, § 1: Jan. 1, 2008, by its own terms.

Acts 2013, No. 1164, § 4, provided: "Effective Date. Sections 1 through 3 of this act are effective on the first day of the calendar quarter following the effective date of this act."

CASE NOTES

Taxpayer.

Lender was not entitled to bad-debt refunds, under § 26-52-309, of sales taxes paid on defaulted consumer credit accounts with retailers because: (1) the retailer, not the lender, was the "taxpayer" under § 26-52-309; and (2) the lender was not entitled to such refunds as an assignee of the retailer, as the Gross Receipts Act did not include "assignee" in the definition

of a "taxpayer." Citifinancial Retail Servs. Div. of Citicorp Trust Bank, Fsb v. Weiss, 372 Ark. 128, 271 S.W.3d 494 (2008).

26-52-105. Administration — Rules and regulations.

CASE NOTES

Cited: Weiss v. Bryce Co., LLC, 2009 Ark. 412, 330 S.W.3d 756 (2009).

26-52-117. Sellers and affiliated persons — Referral agreements — Notice required.

(a) As used in this section:

(1) "Affiliated person" means:

(A) A person that is a member of the same controlled group of corporations as the seller; or

(B) Another entity that, notwithstanding its form of organization, bears the same ownership relationship to the seller as a corporation that is a member of the same controlled group of corporations;

(2) "Controlled group of corporations" means the same as in 26 U.S.C. § 1563(a), as it existed on January 1, 2011; and

(3) "Facilitator" means a person that directly aids or assists sellers in making remote sales, including without limitation a person that operates a website marketplace through which the seller makes sales.

(b) A seller is presumed to be engaged in the business of selling tangible personal property or taxable services for use in the state if an affiliated person is subject to the sales and use tax jurisdiction of the state and the:

(1) Seller sells a similar line of products as the affiliated person and sells the products under the same business name or a similar business name;

(2) Affiliated person uses its in-state employees or in-state facilities to advertise, promote, or facilitate sales by the seller to consumers;

(3) Affiliated person maintains an office, distribution facility, warehouse or storage place, or similar place of business to facilitate the delivery of property or services sold by the seller to the seller's business;

(4) Affiliated person uses trademarks, service marks, or trade names in the state that are the same or substantially similar to those used by the seller; or

(5) Affiliated person delivers, installs, assembles, or performs maintenance services for the seller's purchasers within the state.

(c) The presumption in subsection (b) of this section may be rebutted by demonstrating that the affiliated person's activities in the state are not significantly associated with the seller's ability to establish or maintain a market in the state for the seller's sales.

(d)(1) If there is not an affiliated person with respect to a seller in the state, the seller is presumed to be engaged in the business of selling tangible personal property or taxable services for use in the state if the

seller enters into an agreement with one (1) or more residents of the state under which the residents, for a commission or other consideration, directly or indirectly refer potential purchasers, whether by a link on an Internet website or otherwise, to the seller.

(2) However, subdivision (d)(1) of this section applies only if the cumulative gross receipts from sales by the seller to purchasers in the state who are referred to the seller by all residents according to the type of agreement described in subdivision (d)(1) of this section exceed ten thousand dollars ($10,000) during the preceding twelve (12) months.

(e)(1) The presumption in subsection (d) of this section may be rebutted by submitting proof that the residents with whom the seller has an agreement did not engage in any activity within the state that was significantly associated with the seller's ability to establish or maintain the seller's market in the state during the preceding twelve (12) months.

(2) Proof provided under subdivision (e)(1) of this section may consist of written statements from all of the residents with whom the seller has an agreement stating that they did not engage in any solicitation in the state on behalf of the seller during the preceding twelve (12) months if the statements were provided and obtained in good faith.

(f) The Director of the Department of Finance and Administration shall promulgate rules to implement this section.

History. Acts 2011, No. 1001, § 1; 2013, No. 1135, § 12.

Amendments. The 2013 amendment substituted "twelve (12) months" for "year" in (e)(2).

Effective Dates. Acts 2011, No. 1001, § 2, provided: "Subsection (d) of § 26-52-117 is effective ninety (90) days after the effective date of this act and shall apply to sales made, uses occurring, and services rendered on or after the effective date of this act in accordance with the applicable transition provisions and without regard to the date the seller and the resident entered into the agreement described in subsection (d) of § 26-52-117. The twelve (12) months before the effective date of this act are included as part of the preceding twelve (12) months for purposes of subdivision (d)(2) of § 26-52-117."

Subchapter 2 — Permits

SECTION.

26-52-208. [Repealed.]

Publisher's Notes. This section, concerning revocation or suspension and renewal, was repealed by Acts 2009, No. 655, § 11. The section was derived from Acts 1941, No. 386, § 12; A.S.A. 1947, § 84-1913.

For current law, see § 26-52-209 and the Arkansas Tax Procedure Act, § 26-18-101 et seq.

Subchapter 3 — Imposition of Tax

Effective Dates. Acts 2009, No. 384, § 15: Mar. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law require amendment to provide consistency with the Streamlined Sales and Use Tax Agreement, that a withdrawal from stock is subject to gross receipts tax under current law, that clarification is needed to ensure that the original legislative intent is fulfilled, and that this act is immediately necessary to prevent possible confusion among the taxpayers of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 436, § 3: July 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that unemployment is rising in Arkansas, that the rise in unemployment has resulted in an increase in the number of Arkansans unable to afford basic necessities; and that in order to aid the people of Arkansas, the sales and use tax rate on food and food ingredients should be reduced. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009."

Acts 2009, No. 691, § 3: July 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly that manufacturers in this state have suffered losses due to sharp increases in energy costs; that these manufacturers are unable to set the price for the products they produce and are particularly vulnerable to price volatility; that the current sales and use tax on utilities consumed by these manufacturers located within this state creates a competitive disadvantage; that this act is intended to address that problem by providing a reduced tax rate on utilities consumed by manufacturers located in this state; and that this act is necessary to prevent the loss of manufacturing jobs. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health, and safety shall become effective on July 1, 2009."

Acts 2009, No. 695, § 3: July 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly that manufacturers in this state have suffered losses due to sharp increases in energy costs; that these manufacturers are unable to set the price for the products they produce and are particularly vulnerable to price volatility; that the current sales and use tax on utilities consumed by these manufacturers located within this state creates a competitive disadvantage; that this act is intended to address that problem by providing a reduced tax rate on utilities consumed by manufacturers located in this state; and that this act is necessary to prevent the loss of manufacturing jobs. Therefore, an emergency is

hereby declared to exist and this act being necessary for the preservation of public peace, health, and safety shall become effective on July 1, 2009."

Acts 2011, No. 754, § 4: July 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the cost of manufacturing continues to climb; that the Arkansas unemployment rate is extremely high; that the economy has dramatically affected manufacturers and resulted in layoffs; that decreasing the sales and use tax on natural gas and electricity used by manufacturers would provide manufacturers with a way to increase the number of employees and that this, in turn, would increase production and provide lucrative employment for Arkansans. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2011."

Acts 2011, No. 755, § 3: July 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that unemployment is rising in the state; that the rise in unemployment has resulted in an increase in the number of residents unable to afford basic necessities; and that in order to aid the people of the state, the sales and use tax rate on food and food ingredients should be reduced. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2011."

Acts 2013, No. 1398, § 3: July 1, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the unemployment level in Arkansas is unacceptable; that this unemployment level results in an increase in the number of Arkansans unable to afford basic necessities; and that this act is necessary because the state sales and use tax on food and food ingredients should be eliminated as soon as it is economically feasible to do so in order to aid Arkansans. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013."

Acts 2013, No. 1411, § 7: July 1, 2014. Effective date clause provided: "This act is effective on and after July 1, 2014."

Acts 2013, No. 1450, § 3: July 1, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the unemployment level in Arkansas is unacceptable; that this unemployment level results in an increase in the number of Arkansans unable to afford basic necessities; and that this act is necessary because the state sales and use tax on food and food ingredients should be eliminated as soon as it is economically feasible to do so in order to aid Arkansans. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013."

26-52-301. Tax levied.

Except for food and food ingredients that are taxed under § 26-52-317, there is levied an excise tax of three percent (3%) upon the gross proceeds or gross receipts derived from all sales to any person of the following:

(1) Tangible personal property;

(2) Natural or artificial gas, electricity, water, ice, steam, or any other tangible personal property sold as a utility or provided as a public service;

(3) The following services:

(A)(i) Service of furnishing rooms, suites, condominiums, townhouses, rental houses, or other accommodations by hotels, apartment hotels, lodging houses, tourist camps, tourist courts, property man-

agement companies, or any other provider of accommodations to transient guests.

(ii) As used in subdivision (3)(A)(i) of this section, "transient guests" means those who rent accommodations other than their regular place of abode on less than a month-to-month basis;

(B)(i) Service of initial installation, alteration, addition, cleaning, refinishing, replacement, and repair of:

(a) Motor vehicles;
(b) Aircraft;
(c) Farm machinery and implements;
(d) Motors of all kinds;
(e) Tires and batteries;
(f) Boats;
(g) Electrical appliances and devices;
(h) Furniture;
(i) Rugs;
(j) Flooring;
(k) Upholstery;
(l) Household appliances;
(m) Televisions and radios;
(n) Jewelry;
(o) Watches and clocks;
(p) Engineering instruments;
(q) Medical and surgical instruments;
(r) Machinery of all kinds;
(s) Bicycles;
(t) Office machines and equipment;
(u) Shoes;
(v) Tin and sheetmetal;
(w) Mechanical tools; and
(x) Shop equipment.

(ii)*(a)* However, the provisions of this section shall not apply to a coin-operated car wash.

(b) As used in subdivision (3)(B)(ii)(*a*) of this section, "coin-operated car wash" means a car wash in which the car washing equipment is activated by the insertion of coins into a slot or receptacle and the labor of washing the exterior of the car or motor vehicle is performed solely by the customer or by mechanical equipment.

(iii) Additionally, the gross receipts tax levied in this section shall not apply to the repair or maintenance of railroad parts, railroad cars, and equipment brought into the State of Arkansas solely and exclusively for the purpose of being repaired, refurbished, modified, or converted within this state.

(iv) The General Assembly determines and affirms that the original intent of subdivision (3) of this section which provides that gross receipts derived from certain services would be subject to the gross receipts tax was not intended to be applicable, nor shall Arkansas gross receipts taxes be collected, with respect to services performed

on watches and clocks which are received by mail or common carrier from outside this state and which, after the service is performed, are returned by mail or common carrier or in the repairer's own conveyance to points outside this state.

(v) Additionally, the gross receipts tax levied in this section shall not apply to the repair or remanufacture of industrial metal rollers or platens that have a remanufactured, nonmetallic material covering on all or part of the roller or platen surface which are brought into the State of Arkansas solely and exclusively for the purpose of being repaired or remanufactured in this state and are then shipped back to the state of origin.

(vi)*(a)* The gross receipts tax levied in this section shall not apply to the service of alteration, addition, cleaning, refinishing, replacement, or repair of commercial jet aircraft, commercial jet aircraft components, or commercial jet aircraft subcomponents.

(b) "Commercial jet aircraft" means any commercial, military, private, or other turbine or turbo jet aircraft having a certified maximum take-off weight of more than twelve thousand five hundred pounds (12,500 lbs.).

(vii) The provisions of subdivision (3)(B)(i) of this section shall not apply to the services performed by a temporary or leased employee or other contract laborer on items owned or leased by the employer. The following criteria must be met for a person to be a temporary or leased employee:

(a) There must be a written contract with the temporary employment agency, employee leasing company, or other contractor providing the services;

(b) The employee, temporary employment agency, employee leasing company, or other contractor must not bear the risk of loss for damages caused during the performance of the contract. The person for whom the services are performed must bear the risk of loss; and

(c) The temporary or leased employee or contract laborer is controlled by the employer as if he or she were a full-time permanent employee. "Control" includes, but is not limited to, scheduling work hours, designating work duties, and directing work performance.

(viii)*(a)* Additionally, the gross receipts tax levied in this section shall not apply to the initial installation, alteration, addition, cleaning, refinishing, replacement, or repair of nonmechanical, passive, or manually operated components of buildings or other improvements or structures affixed to real estate, including, but not limited to, the following:

(1) Walls;
(2) Ceilings;
(3) Doors;
(4) Locks;
(5) Windows;
(6) Glass;
(7) Heat and air ducts;

(8) Roofs;
(9) Wiring;
(10) Breakers;
(11) Breaker boxes;
(12) Electrical switches and receptacles;
(13) Light fixtures;
(14) Pipes;
(15) Plumbing fixtures;
(16) Fire and security alarms;
(17) Intercoms;
(18) Sprinkler systems;
(19) Parking lots;
(20) Fences;
(21) Gates;
(22) Fireplaces; and
(23) Similar components which become a part of real estate after installation, except flooring.

(b) A contractor is deemed to be a consumer or user of all tangible personal property used or consumed by the contractor in providing such nontaxable services, in the same manner as when performing any other contract.

(c) This subdivision (3)(B)(viii) shall not apply to any services subject to tax pursuant to the terms of subdivision (3)(D) of this section.

(ix) The gross receipts tax levied in subdivision (3)(B)(i) of this section shall not apply to the service of initial installation of any property that is specifically exempted from the tax imposed by this chapter;

(C)(i) Service of cable television, community antenna television, and any and all other distribution of television, video, or radio services with or without the use of wires provided to subscribers or paying customers or users, including all service charges and rental charges, whether for basic service, premium channels, or other special service, and including installation and repair service charges and any other charges having any connection with the providing of these services.

(ii) The tax levied by this section does not apply to services purchased by a radio or television company for use in providing its services.

(iii)*(a)* The tax levied by this section applies to the sale of a subscription for digital audio-visual work and digital audio work to an end user that does not have the right of permanent use granted by the seller and the use is contingent on continued payments by the purchaser.

(b) As used in this subdivision (3)(C)(iii):

(1) "Digital audio-visual work" means an electronically transferred series of related images that when shown in succession, impart an impression of motion, together with accompanying sounds, if any; and

(2) "Digital audio work" means an electronically transferred work that results from the fixation of a series of musical, spoken, or other sounds, including ringtones; and

(D)(i) Service of:

(a) Providing transportation or delivery of money, property, or valuables by armored car;

(b) Providing cleaning or janitorial work;

(c) Pool cleaning and servicing;

(d) Pager services;

(e) Telephone answering services;

(f) Lawn care and landscaping services;

(g) Parking a motor vehicle or allowing the motor vehicle to be parked;

(h) Storing a motor vehicle;

(i) Storing furs; and

(j) Providing indoor tanning at a tanning salon.

(ii) As used in subdivision (3)(D)(i) of this section:

(a) "Landscaping" means the installation, preservation, or enhancement of ground covering by planting trees, bushes and shrubbery, grass, flowers, and other types of decorative plants;

(b) "Lawn care" means the maintenance, preservation, or enhancement of ground covering of nonresidential property and does not include planting trees, bushes and shrubbery, grass, flowers, and other types of decorative plants; and

(c) "Residential" means a single family residence used solely as the principal place of residence of the owner;

(4) Printing of all kinds, types, and characters, including the service of overprinting, and photography of all kinds;

(5) Tickets or admissions to places of amusement or to athletic, entertainment, or recreational events, or fees for access to or the use of amusement, entertainment, athletic, or recreational facilities;

(6)(A) Dues and membership fees to:

(i) Health spas, health clubs, and fitness clubs; and

(ii) Private clubs within the meaning of § 309-202(14) which hold any permit from the Alcoholic Beverage Control Board allowing the sale, dispensing, or serving of alcoholic beverages of any kind on the premises.

(B)(i) Except as provided in subdivision (6)(B)(ii) of this section, the gross receipts derived from services provided by or through a health spa, health club, fitness club, or private club shall not be subject to gross receipts tax unless the service is specifically enumerated as a taxable service under this chapter.

(ii) The gross receipts derived by a private club from the charges to members for the preparation and serving of mixed drinks or for the cooling and serving of beer and wine shall be subject to gross receipts tax as well as any supplemental taxes as provided by law;

(7)(A) Contracts, including service contracts, maintenance agreements and extended warranties, which in whole or in part provide for

the future performance of or payment for services which are subject to gross receipts tax.

(B) The seller of the contract must collect and remit the tax due on the sale of the contract except when the contract is sold simultaneously with a motor vehicle in which case the purchaser of the vehicle shall pay gross receipts tax on the purchase of the contract at the time of vehicle registration; and

(8) The total gross receipts derived from the retail sale of any device used in playing bingo and any charge for admittance to facilities or for the right to play bingo or other games of chance regardless of whether such activity might otherwise be prohibited by law.

History. Acts 1941, No. 386, § 3; 1945, No. 64, § 1; 1951 (1st Ex. Sess.), No. 8, § 1; 1957, No. 19, § 1; 1959, No. 260, § 1; 1971, No. 214, § 1; 1973, No. 181, § 1; 1977, No. 500, § 1; 1979, No. 585, § 1; 1981, No. 471, § 1; 1981, No. 983, § 1; A.S.A. 1947, §§ 84-1903, 84-1903.4; Acts 1987, No. 27, § 2; 1987, No. 188, § 1; 1989, No. 769, § 1; 1989 (3rd Ex. Sess.), No. 89, § 1; 1992 (1st Ex. Sess.), No. 58, § 2; 1992 (1st Ex. Sess.), No. 61, § 2; 1992 (2nd Ex. Sess.), No. 5, §§ 1, 2; 1993, No. 282, § 1; 1993, No. 1245, § 4; 1995, No. 257, § 1; 1995, No. 284, § 1; 1995, No. 835, § 2; 1995, No. 1040, § 1; 1997, No. 1076, § 2; 1997, No. 1252, § 1; 1997, No. 1263, § 1; 1997, No. 1359, § 32; 1999, No. 1152, § 2; 1999, No. 1348, § 1; 2001, No. 907, § 2; 2001, No. 1064, § 1; 2003, No. 1112, § 1; 2003, No. 1273, § 6; 2003 (2nd Ex. Sess.), No. 107, §§ 5, 6; 2005, No. 1879, § 1; 2007, No. 154, §§ 3, 4; 2007, No. 110, § 3; 2009, No. 384, § 3; 2011, No. 291, § 9.

Amendments. The 2009 amendment rewrote (2).

The 2011 amendment added (3)(C)(iii).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Taxes on Revenues and Income from Communications Satellite Services. 51 A.L.R.6th 257.

26-52-303. Border cities or towns — Tax rate — Exemptions.

(a) The rate of tax shall be one percent (1%) above the state sales tax rate as levied by the General Assembly, by initiatives enacted by the people of the State of Arkansas, and by amendments to the Arkansas Constitution if:

(1) An Arkansas city or incorporated town is divided by a state line from an incorporated city or town in an adjoining state;

(2) The city or town in the adjoining state is of greater population than the Arkansas city or town;

(3) A tax imposed in the adjoining state is in the nature of a selective sales tax or limited to specific items as a special excise tax; and

(4) The border city has voted to levy an additional one percent (1%) gross receipts tax in the city in lieu of paying state income taxes by individuals who are residents of the city as authorized by § 26-52-601 et seq.

(b) With respect to a motor vehicle sold in any such city or incorporated town, the exemption authorized in this section shall be applicable only to a motor vehicle sold to and registered by a bona fide resident of

such an Arkansas city or incorporated town and shall not be applicable to a motor vehicle sold to a nonresident.

(c)(1) The Director of the Department of Finance and Administration shall require any person claiming this exemption to file a sworn statement in writing that the person is a resident of that city or incorporated town and such other information as the director may determine is necessary to establish the residence of the person.

(2) Upon conviction, a person filing a false statement or otherwise falsely obtaining or assisting another person to falsely obtain the benefits of the exemption authorized in this section is guilty of a violation and shall be fined in a sum of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

History. Acts 1941, No. 386, § 4; 1957, No. 158, § 1; 1957, No. 233, § 1; 1961, No. 252, § 1; 1965, No. 122, § 1; 1971, No. 214, § 2; 1979, No. 401, § 48; 1983 (1st Ex. Sess.), No. 63, § 1; A.S.A. 1947, §§ 84-1903.1, 84-1904; Acts 1991, No. 3, § 2; 1995, No. 1008, § 3; 1999, No. 1492, § 5; 2003, No. 1273, § 7; 2009, No. 655, § 12.

Amendments. The 2009 amendment inserted "Upon conviction" and "is guilty of a violation and" in (c)(2), and made related and minor stylistic changes.

26-52-304. Tax levied on sales of computer software and maintenance of computer hardware.

(a) The excise tax levied by this chapter and by any act supplemental thereto, is levied on gross receipts or gross proceeds received from the following:

(1)(A) Sales of computer software, including prewritten computer software, which shall be taxed as sales of tangible personal property.

(B) As used in this section:

(i) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

(ii)*(a)* "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(b) "Computer software" does not include software that is delivered electronically or by load and leave;

(iii) "Computer software maintenance contract" means a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software or support services with respect to computer software, or both;

(iv) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

(v) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(vi) "Load and leave" means delivery to the purchaser by use of a tangible storage media in which the tangible storage media is not physically transferred to the purchaser; and

(vii) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser; and

(2) Service of repairing or maintaining computer equipment or hardware in any form.

(b) [Repealed.]

(c) [Repealed.]

(d) The gross receipts or gross proceeds derived from the sale of a computer software maintenance contract are not taxable.

History. Acts 1983 (1st Ex. Sess.), No. 88, §§ 1, 3; A.S.A. 1947, §§ 84-1903.5, 84-1903.5n; Acts 2007, No. 181, § 12; 2009, No. 384, § 4; 2009, No. 655, § 13; 2011, No. 291, § 10.

Amendments. The 2009 amendment by No. 384 inserted "not" in (a)(1)(B)(vi).

The 2009 amendment by No. 655 deleted (b) and (c).

The 2011 amendment inserted (a)(1)(B)(iii) and redesignated the remaining subdivisions accordingly; and added (d).

26-52-309. Deduction for bad debts generally.

RESEARCH REFERENCES

ALR. Recovery of Sales Taxes Paid on Bad Debts. 38 A.L.R.6th 255.

CASE NOTES

Applicability.

Lender was not entitled to bad-debt refunds, under this section, of sales taxes paid on defaulted consumer credit accounts with retailers because: (1) the retailer, not the lender, was the "taxpayer" this section; and (2) the lender was not entitled to such refunds as an assignee of the retailer. Citifinancial Retail Servs. Div. of Citicorp Trust Bank, Fsb v. Weiss, 372 Ark. 128, 271 S.W.3d 494 (2008).

26-52-314. Prepaid calling service and prepaid wireless calling service.

(a) Sales of a prepaid calling service or a prepaid wireless calling service and the recharge of a prepaid calling service or a prepaid wireless calling service shall be subject to the Arkansas gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) As used in this subchapter:

(1) "Prepaid calling service" means the right to exclusively access a telecommunication service, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(2) "Prepaid telephone calling card" or "prepaid authorization number" mean the exclusive purchase of telephone or telecommunications

services, paid for in advance, which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed;

(3) "Prepaid wireless calling service" means a telecommunication service that provides the right to utilize a mobile wireless service as well as other non-telecommunications services, including the download of a digital product delivered electronically and content and ancillary services, which must be paid for in advance and sold in predetermined units or dollars of which the number declines with use in a known amount; and

(4) "Recharge" means the purchase of additional telephone or telecommunication services for a previously purchased prepaid calling service or prepaid wireless calling service.

(c)(1) A sale of a prepaid calling service or a prepaid wireless calling service or the recharge of a prepaid calling service or a prepaid wireless calling service is subject to gross receipts tax at the point of sale by the retail vendor.

(2) If the sale or recharge of a prepaid calling service or a prepaid wireless calling service does not take place at the retail vendor's place of business, it shall be sourced in accordance with § 26-52-521(b).

(d) The gross receipts tax levied by this section on the sale of a prepaid calling service or a prepaid wireless calling service and the recharge of a prepaid calling service or a prepaid wireless calling service shall be due on all such sales occurring on or after July 1, 1999.

(e) The Director of the Department of Finance and Administration shall promulgate rules to implement this section.

History. Acts 1999, No. 1348, § 2; 2007, No. 181, § 44; 2007, No. 827, § 221; 2013, No. 538, § 2.

Amendments. The 2013 amendment deleted "that is" preceding "sold in" in (b)(3).

26-52-315. Telecommunications and related services.

RESEARCH REFERENCES

ALR. Validity of State and Local Taxation and Regulation of Voice over Internet Protocol (VoIP) Service. 41 A.L.R.6th 375.

26-52-316. Services subject to tax.

(a) The gross proceeds or gross receipts derived from the following services are subject to this chapter:

(1) Wrecker and towing services;

(2) Collection and disposal of solid wastes;

(3) The cleaning of parking lots and gutters;

(4) Dry cleaning and laundry services;

(5) Industrial laundry services;

(6) Body piercing, tattooing, and electrolysis services;

(7) Pest control services;

(8) Security and alarm monitoring services;

(9) Boat storage and docking fees;

(10) The furnishing of camping spaces or trailer spaces at public or privately owned campgrounds, except for federal campgrounds, on less than a month-to-month basis;

(11) Locksmith services; and

(12) Pet grooming and kennel services.

(b)(1) As used in this section, "locksmith services" means repairing, servicing, or installing locks and locking devices, whether the locks and locking devices are:

(A) Incorporated into real property;

(B) Incorporated into tangible personal property; or

(C) Separate and apart from other property.

(2) "Locksmith services" also includes unlocking locks or locking devices for another person.

(3) "Locksmith services" shall not include the initial installation of locks by a contractor in new construction.

(c) [Repealed.]

History. Acts 2003 (2nd Ex. Sess.), No. 107, § 7; 2009, No. 1274, §§ 1, 2.

Amendments. The 2009 amendment deleted former (a)(6) and redesignated the remaining subdivisions accordingly; and added (c).

26-52-317. Food and food ingredients.

(a)(1) The Director of the Department of Finance and Administration shall determine the following conditions:

(A) That federal law authorizes the state to collect sales and use tax from some or all of the sellers that have no physical presence in the State of Arkansas and that make sales of taxable goods and services to Arkansas purchasers;

(B) That initiating the collection of sales and use tax from these sellers would increase the net available general revenues needed to fund state agencies, services, and programs; and

(C)(i) That during a six-month consecutive period, the amount of net available general revenues attributable to the collection of sales and use tax from sellers that have no physical presence in the State of Arkansas is equal to or greater than one hundred fifty percent (150%) of sales and use tax collected under subsection (c) of this section and § 26-53-145 on food and food ingredients.

(ii) The director shall make the determination under subdivision (a)(1)(C)(i) of this section on a monthly basis following the determination that the conditions under subdivision (a)(1)(A) of this section have been met.

(2)(A) Beginning July 1, 2013, the director shall make a monthly determination as to whether the aggregate amount of deductions from net general revenues attributable to the following during the most recently ended six-month consecutive period, as compared with the same six-month period in the prior year, has declined by thirty-five million dollars ($35,000,000) or more:

(i) The Educational Adequacy Fund;

(ii) Bonds issued under the Arkansas College Savings Bond Act of 1989, § 6-62-701 et seq.;

(iii) Bonds issued under the Arkansas Higher Education Technology and Facility Improvement Act of 2005, § 6-62-1101 et seq.;

(iv) The City-County Tourist Facilities Aid Fund;

(v) Amounts disbursed or approved to be disbursed by the Department of Education for desegregation expenses under any desegregation settlement agreement, as certified by the Treasurer of State and the Chief Fiscal Officer of the State under § 6-20-212; and

(vi) Bonds issued under the Arkansas Water, Waste Disposal and Pollution Abatement Facilities Financing Act of 1997 and the Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing Act of 2007, § 15-20-1301 et seq.

(B)(i) In making the determination in this subdivision (a)(2), the director shall consider all economic factors existing at the time of the determination that could potentially affect the decline in the aggregate amount of deductions, including without limitation pending litigation.

(ii) If the consideration of additional economic factors under subdivision (a)(2)(B)(i) of this section results in a determination that the decline in the aggregate amount of deductions is not likely to remain at that reduced level, the director shall conclude that the conditions in this subdivision (a)(2) have not been met.

(3) When the director finds that all of the conditions in either subdivision (a)(1) or subdivision (a)(2) of this section have been met, then the gross receipts or gross proceeds taxes levied under subsection (c) of this section shall be levied at the rate of zero percent (0%) on the sale of food and food ingredients beginning on the first day of the calendar quarter that is at least thirty (30) days following the determination of the director.

(b) As used in this section:

(1) "Food" and "food ingredients" mean the same as defined in § 26-52-103 except that "food" and "food ingredients" do not include prepared food; and

(2) "Prepared food" means the same as defined in § 26-52-103 except that "prepared food" does not include:

(A) Food that is only cut, repackaged, or pasteurized by the seller; or

(B) Eggs, fish, meat, and poultry, and foods containing these raw animal foods requiring cooking by the consumer to prevent foodborne illnesses as recommended by the United States Food and Drug Administration in its 2005 Food Code, § 3-401.11, as it existed on January 1, 2007.

(c)(1) Beginning July 1, 2011, in lieu of the gross receipts or gross proceeds taxes levied on food and food ingredients under §§ 26-52-301 and 26-52-302, there is levied a tax on the gross receipts or gross proceeds derived from the sale of food and food ingredients at the rate of one and three-eighths percent (1.375%), to be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited into the Educational Adequacy Fund.

(2) The gross receipts or gross proceeds taxes levied under subdivision (c)(1) of this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(d) The gross receipts or gross proceeds derived from the sale of food and food ingredients shall continue to be subject to the:

(1) Excise tax levied under Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county gross receipts taxes.

(e) The Department of Finance and Administration shall promulgate rules to implement the provisions of this section.

History. Acts 2005, No. 647, § 1; 2007, No. 110, § 1; 2009, No. 436, § 1; 2009, No. 655, § 14; 2011, No. 755, § 1; 2011, No. 983, § 6; 2013, No. 1398, § 1; 2013, No. 1450, § 1.

Amendments. The 2009 amendment by No. 436, in (c)(1), substituted "July 1, 2009" for "July 1, 2007" and "one and seven-eighths percent (1.875%)" for "two and seven-eighths percent (2.875%)."

The 2009 amendment by No. 655 deleted (b)(1), (b)(2), and (b)(5), which defined "alcoholic beverage," "dietary supplement," and "tobacco," respectively, redesignated the remaining subdivisions accordingly, rewrote (b)(1) and (b)(2), and made related changes.

The 2011 amendment by No. 755, in (c)(1), substituted "July 1, 2011" for July 1, 2009" and "one and three-eighths percent (1.375%)" for "one and seven-eighths percent (1.875%)."

The 2011 amendment by No. 983 subdivided (b)(2).

The 2013 amendment by identical acts Nos. 1398 and 1450 inserted present (a)(2) and redesignated the remaining subdivision accordingly; in (a)(3), inserted "either" and "or subdivision (a)(2)," and substituted "calendar quarter that is at least thirty (30) days" for "second calendar month."

26-52-318. Heavy equipment.

(a) As used in this section, "heavy equipment" means:

(1) Asphalt pavers;

(2) Boring machines;

(3) Bulldozers;

(4) Cable plows;

(5) Compaction equipment;

(6) Concrete pavers;

(7) Cranes;

(8) Crawler tractors and loaders;

(9) Demolition equipment;

(10) Earth movers;
(11) Excavators;
(12) Loader backhoes;
(13) Motor graders;
(14) Portable air compressors;
(15) Rock drills;
(16) Rough terrain fork lifts;
(17) Scrapers;
(18) Skid-steer loaders;
(19) Trenchers;
(20) Wheel loaders; or
(21) Any other equipment determined by the Director of the Department of Finance and Administration to be heavy equipment.

(b) The gross receipts tax levied under this chapter on the sale of new or used heavy equipment shall be collected, reported, and remitted by the heavy equipment dealer.

(c) A heavy equipment dealer shall file a quarterly report with the Department of Finance and Administration identifying all sales of heavy equipment that are exempt from the gross receipts tax levied in this chapter, including without limitation the:
(1) Name and address of the purchaser;
(2) Item purchased;
(3) Invoice number;
(4) Amount of sales or use tax paid; and
(5) Basis for the exemption.

History. Acts 2005, No. 1693, § 1; 2009, No. 682, § 1.

Amendments. The 2009 amendment deleted (c) through (e), which pertained to a decal affixed to heavy equipment to prove that Arkansas tax was paid on the equipment, and added (c).

Effective Dates. Acts 2009, No. 682, § 3, provided: "Sections 1 and 2 of this act are effective on the first day of the calendar quarter following the effective date of this act."

26-52-319. Natural gas and electricity used by manufacturers. [Effective until July 1, 2014.]

(a)(1) Beginning July 1, 2007, in lieu of the gross receipts or gross proceeds tax levied in §§ 26-52-301 and 26-52-302, there is levied an excise tax on the gross receipts or gross proceeds derived from the sale of natural gas and electricity to a manufacturer for use directly in the actual manufacturing process at the rate of four and three-eighths percent (4.375%).

(2) Beginning July 1, 2008, the tax rate levied in subdivision (a)(1) of this section shall be imposed at the rate of three and seven-eighths percent (3.875%).

(3)(A) Beginning July 1, 2009, the tax rate levied in subdivision (a)(1) of this section shall be imposed at the rate of three and one-eighth percent (3.125%).

(B)(i) The Director of the Department of Finance and Administration shall monitor the amount of tax savings received by all taxpayers as a result of the reduction in the tax rate from that levied in §§ 26-52-301 and 26-52-302 to that levied in subdivision (a)(3)(A) of this section.

(ii) When the director determines that the amount of tax savings resulting from the determination described in subdivision (a)(3)(B)(i) of this section plus any use tax savings described in § 26-53-148(a)(3)(B) would reach twenty-seven million dollars ($27,000,000) during a fiscal year, the director shall not process any further refund claims through a refund process during the fiscal year for taxpayers seeking to claim the reduced tax rate provided by this section. The amount of twenty-seven million dollars ($27,000,000) is intended to cover the accumulated but unclaimed reduction of sales and use tax on natural gas and electricity as provided by Acts 2007, No. 185, as well as the additional reduction provided by Acts 2009, No. 695.

(iii) If the director determines that discontinuing refund payments as provided in subdivision (a)(3)(B)(ii) of this section is insufficient to prevent the amount of tax savings from exceeding twenty-seven million dollars ($27,000,000) during a fiscal year, the director may decline to accept any amended return filed by a taxpayer to claim an overpayment resulting from the reduced tax rate provided by this section for a period other than the period for which a tax return is currently due.

(C)(i) Refund requests and amended returns filed with the director to claim the overpayment resulting from the reduced rate in subdivision (a)(3)(A) of this section shall be processed in the order they are received by the director. A taxpayer that does not receive a refund after the refund and amended return process has ceased under subdivision (a)(3)(B) of this section shall be given priority to receive a refund during the subsequent fiscal year. The unpaid refunds from the prior fiscal year shall be processed before any refund claims filed in the current fiscal year to claim the benefit of this section.

(ii) The statute of limitations for refunds and amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to allow the payment of a refund under the process provided in subdivision (a)(3)(C)(i) of this section.

(4)(A) Beginning July 1, 2011, the tax rate levied in subdivision (a)(1) of this section shall be imposed at the rate of two and five-eighths percent (2.625%).

(B)(i) The Director of the Department of Finance and Administration shall monitor the amount of tax savings received by all taxpayers as a result of the reduction in the tax rate from that levied in §§ 26-52-301 and 26-52-302 to that levied in subdivision (a)(4)(A) of this section.

(ii) When the director determines that the amount of tax savings resulting from the determination described in subdivision (a)(4)(B)(i) of this section plus any use tax savings described in § 26-53-

148(a)(4)(B) would reach twenty-seven million dollars ($27,000,000) during a fiscal year, the director shall not process any further refund claims through a refund process during the fiscal year for taxpayers seeking to claim the reduced tax rate provided by this section. The amount of twenty-seven million dollars ($27,000,000) is intended to cover the accumulated but unclaimed reduction of sales and use tax on natural gas and electricity as provided by this section.

(iii) If the director determines that discontinuing refund payments as provided in subdivision (a)(4)(B)(ii) of this section is insufficient to prevent the amount of tax savings from exceeding twenty-seven million dollars ($27,000,000) during a fiscal year, the director may decline to accept any amended return filed by a taxpayer to claim an overpayment resulting from the reduced tax rate provided by this section for a period other than the period for which a tax return is currently due.

(C)(i) Refund requests and amended returns filed with the director to claim the overpayment resulting from the reduced rate in subdivision (a)(4)(A) of this section shall be processed in the order they are received by the director. A taxpayer that does not receive a refund after the refund and amended return process has ceased under subdivision (a)(4)(B) of this section shall be given priority to receive a refund during the subsequent fiscal year. The unpaid refunds from the prior fiscal year shall be processed before any refund claims filed in the current fiscal year to claim the benefit of this section.

(ii) The statute of limitations for refunds and amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to allow the payment of a refund under the process provided in subdivision (a)(4)(C)(i) of this section.

(5) The taxes levied in this subsection shall be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the tax, interest, penalties, and costs received by the director shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Educational Adequacy Fund.

(6)(A) The excise tax levied in this section applies only to natural gas and electricity sold for use directly in the actual manufacturing process.

(B) Natural gas and electricity sold for any other purpose shall be subject to the full gross receipts or gross proceeds tax levied under §§ 26-52-301 and 26-52-302.

(7) The excise tax levied in this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(b) As used in this section, "manufacturer" means a:

(1) Manufacturer classified within sectors 31 through 33 of the North American Industry Classification System, as in effect on January 1, 2011; or

(2) Generator of electric power classified within sector 22 of the North American Industry Classification System, as in effect on January 1, 2011, that uses natural gas to operate a new or existing generating facility that uses combined-cycle gas turbine technology.

(c)(1) Except as provided in subdivision (c)(2)(C) of this section, the tax rate under subsection (a) of this section does not apply to a manufacturer as defined in subdivision (b)(2) of this section.

(2) In lieu of the tax rate under subsection (a) of this section, the excise tax rate levied on the gross receipts or gross proceeds derived from the sale of natural gas and electricity to a manufacturer as defined in subdivision (b)(2) of this section to operate a new or existing facility that uses combined-cycle gas turbine technology is as follows:

(A) Beginning January 1, 2012, five and one-eighths percent (5.125%);

(B) Beginning January 1, 2013, four and one-eighths percent (4.125%); and

(C) Beginning January 1, 2014, two and five-eighths percent (2.625%).

(3)(A) The amount of tax savings described in subdivision (a)(4)(B)(i) of this section does not include any tax savings received by a manufacturer as defined in subdivision (b)(2) of this section.

(B) Manufacturers as defined in subdivision (b)(2) of this section are not subject to the dollar limitations on refunds and amended returns stated in subsection (a) of this section.

(4) The taxes levied in this subsection shall be distributed in the same manner as set out in subsection (a) of this section.

(d) Natural gas and electricity subject to the reduced tax rate levied in this section shall be separately metered from natural gas and electricity used for any other purpose by the manufacturer or otherwise established under subsection (f) of this section.

(e) Before the sale of natural gas or electricity at the reduced excise tax rate levied in this section, the director may require any seller of natural gas or electricity to obtain a certificate from the consumer, in the form prescribed by the director, certifying that the manufacturer is eligible to purchase natural gas and electricity at the reduced excise tax rate.

(f) The director shall promulgate rules for the proper administration of this section.

(g) The gross receipts or gross proceeds derived from the sale of natural gas and electricity to a manufacturer shall continue to be subject to:

(1) The excise tax levied under the Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county gross receipts taxes.

(h) All existing exemptions from the gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in manufacturing or for other purposes that are otherwise provided by law shall continue in effect.

History. Acts 2007, No. 185, § 1; 2009, No. 655, § 15; 2009, No. 691, § 1; 2009, No. 695, § 1; 2011, No. 754, § 2; 2011, No. 983, § 7.

A.C.R.C. Notes. Acts 2009, No. 691, and Acts 2009, No. 695, are identical acts that amended subsection (a) of this section. Acts 2009, No. 695, was used to codify subsection (a) of this section pursuant to § 1-2-207(a).

Acts 2011, No. 754, § 1, provided: "The General Assembly finds that:

"(1) The cost of manufacturing continues to climb;

"(2) The state unemployment rate is extremely high, and the economy has dramatically affected manufacturers, which has resulted in numerous layoffs;

"(3) Decreasing the sales and use tax rate on natural gas and electricity used by manufacturers would increase employment and production, which, in turn, would provide more lucrative employment opportunities for Arkansans;

"(4) There is a need for additional electrical generation in the state to supply the utilities that serve state individuals and industry;

"(5) Natural gas-fired, combined-cycle generation is the cleanest and most efficient energy produced from fossil fuel used to generate electricity, and it is in the best interest of the state to encourage the use of this technology for generating electricity;

"(6) The state is at a competitive disadvantage compared to the surrounding states to attract and retain the building and operating of high-efficiency electric power generators because the state imposes a six percent (6%) sales tax on the purchase of natural gas used to generate the electricity;

"(7) The state has an abundant supply of natural gas to power high-efficiency, combined-cycle technology electric power generators, and the disadvantage of the high tax should be removed as an incentive to utilities and private industry to construct and operate high-efficiency generating facilities; and

"(8) Other manufacturers in the state enjoy a tax reduction on natural gas used in manufacturing, and these high-efficiency, combined-cycle technology electric power generators that manufacture electricity for resale on the wholesale market should be granted the same exemption as other manufacturers."

The amendments to this section by Acts 2011, No. 983, § 7, are superseded by the amendments to this section by Acts 2011, No. 754, § 2, pursuant to Acts 2011, No. 983, § 23.

Publisher's Notes. For text of section effective July 1, 2014, see the following version.

Amendments. The 2009 amendment by No. 655 added (g).

The 2009 amendment by identical acts Nos. 691 and 695 substituted "seven-eighths" for "seven-eights" in (a)(2), inserted (a)(3), and redesignated the subsequent subdivisions accordingly.

The 2011 amendment by No. 754 substituted "26-52-302" for "26-52-302(a)-(d)" in (a)(1) and (a)(6)(B); inserted present (a)(4) and redesignated the remaining subdivisions accordingly; rewrote (b); added present (c) and redesignated the remaining subsections accordingly; in (d), deleted "in accordance with the rules issued" following "established" and substituted "subsection (f)" for "subsection (e)"; and deleted "have and be invested with full power and authority to" preceding "promulgate" in (f).

The 2011 amendment by No. 983, in (a)(1), deleted "Beginning July 1, 2007" at the beginning and substituted "three and one-eighth percent (3⅛%)" for "four and three-eighths percent (4.375%)"; deleted (a)(2) and (a)(3)(A) and redesignated (a)(3)(B)(i) through (iii) as (a)(2)(A) through (C) and (a)(3)(C)(i) and (ii) as (a)(3)(A) and (B); substituted "subdivision (a)(1)" for "subdivision (a)(3)(A)" in (a)(2)(A); in (a)(2)(B), substituted "subdivision (a)(2)(A)" for "subdivision (a)(3)(B)(i)," "§ 26-53-148(a)(2)" for "§ 26-53-148(a)(3)(B)," and "this section and

§ 26-53-148" for "Acts 2007, No. 185, as well as the additional reduction provided by Acts 2009, No. 695"; substituted "subdivision (a)(2)(B)" for "subdivision (a)(3)(B)(ii)" in (a)(2)(C); in (a)(3)(A), substituted "subdivision (a)(1)" for "subdivision (a)(3)(A)" and "subdivision (a)(2)" for "subdivision (a)(3)(B)"; and substituted "subdivision (a)(3)(A)" for "subdivision (a)(3)(C)(i)" in (a)(3)(B).

26-52-319. Natural gas and electricity used by manufacturers. [Effective July 1, 2014.]

(a)(1)(A) Beginning July 1, 2014, in lieu of the gross receipts or gross proceeds tax levied in §§ 26-52-301 and 26-52-302, there is levied an excise tax on the gross receipts or gross proceeds derived from the sale of natural gas and electricity to a manufacturer for use directly in the actual manufacturing process at the rate of one percent (1%).

(B)(i) Beginning July 1, 2015, the gross receipts or gross proceeds tax levied in §§ 26-52-301 and 26-52-302 and this section shall be levied at a rate of zero percent (0%) on the sale of natural gas and electricity to a manufacturer for use directly in the actual manufacturing process.

(ii) However, the sale of natural gas and electricity to a manufacturer for use directly in the actual manufacturing process shall remain subject to the excise tax of one-eighth of one percent (⅛ of 1%) levied in Arkansas Constitution, Amendment 75, and the temporary excise tax of one-half percent (½%) levied in Arkansas Constitution, Amendment 91.

(2) The taxes levied in this subsection shall be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the tax, interest, penalties, and costs received by the Director of the Department of Finance and Administration shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Educational Adequacy Fund.

(3)(A) The excise tax levied in this section applies only to natural gas and electricity sold for use directly in the actual manufacturing process.

(B) Natural gas and electricity sold for any other purpose are subject to the full gross receipts or gross proceeds tax levied under §§ 26-52-301 and 26-52-302.

(4) The excise tax levied in this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(b) As used in this section, "manufacturer" means a:

(1) Manufacturer classified within sectors 31 through 33 or sector 115111 of the North American Industry Classification System, as in effect on January 1, 2011; or

(2) Generator of electric power classified within sector 22 of the North American Industry Classification System, as in effect on January 1, 2011, that uses natural gas to operate a new or existing generating facility that uses combined-cycle gas turbine technology.

(c)(1) Except as otherwise provided in this subsection, the tax rate under subsection (a) of this section does not apply to a manufacturer as defined in subdivision (b)(2) of this section.

(2) In lieu of the tax rate under subsection (a) of this section, the excise tax rate levied on the gross receipts or gross proceeds derived from the sale of natural gas and electricity to a manufacturer as defined in subdivision (b)(2) of this section to operate a new or existing facility that uses combined-cycle gas turbine technology is as follows:

(A) Beginning January 1, 2012, five and one-eighth percent (5.125%);

(B) Beginning January 1, 2013, four and one-eighth percent (4.125%);

(C) Beginning January 1, 2014, two and five-eighths percent (2.625%); and

(D) Beginning January 1, 2015, one percent (1%).

(3) The taxes levied in this subsection shall be distributed in the same manner as stated in subsection (a) of this section.

(d) Natural gas and electricity subject to the reduced tax rate levied in this section shall be separately metered from natural gas and electricity used for any other purpose by the manufacturer or otherwise established under subsection (f) of this section.

(e) Before the sale of natural gas or electricity at the reduced excise tax rate levied in this section, the director may require any seller of natural gas or electricity to obtain a certificate from the consumer, in the form prescribed by the director, certifying that the manufacturer is eligible to purchase natural gas and electricity at the reduced excise tax rate.

(f) The director shall promulgate rules for the proper administration of this section.

(g) The gross receipts or gross proceeds derived from the sale of natural gas and electricity to a manufacturer shall continue to be subject to:

(1) The excise tax levied under Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county gross receipts taxes.

(h) All existing exemptions from the gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in manufacturing or for other purposes that are otherwise provided by law shall continue in effect.

History. Acts 2007, No. 185, § 1; 2009, No. 655, § 15; 2009, No. 691, § 1; 2009, No. 695, § 1; 2011, No. 754, § 2; 2011, No. 983, § 7; 2013, No. 1411, § 1.

A.C.R.C. Notes. Acts 2009, No. 691, and Acts 2009, No. 695, are identical acts that amended subsection (a) of this section. Acts 2009, No. 695, was used to

codify subsection (a) of this section pursuant to § 1-2-207(a).

Acts 2011, No. 754, § 1, provided: "The General Assembly finds that:

"(1) The cost of manufacturing continues to climb;

"(2) The state unemployment rate is extremely high, and the economy has dramatically affected manufacturers, which has resulted in numerous layoffs;

"(3) Decreasing the sales and use tax rate on natural gas and electricity used by manufacturers would increase employment and production, which, in turn, would provide more lucrative employment opportunities for Arkansans;

"(4) There is a need for additional electrical generation in the state to supply the utilities that serve state individuals and industry;

"(5) Natural gas-fired, combined-cycle generation is the cleanest and most efficient energy produced from fossil fuel used to generate electricity, and it is in the best interest of the state to encourage the use of this technology for generating electricity;

"(6) The state is at a competitive disadvantage compared to the surrounding states to attract and retain the building and operating of high-efficiency electric power generators because the state imposes a six percent (6%) sales tax on the purchase of natural gas used to generate the electricity;

"(7) The state has an abundant supply of natural gas to power high-efficiency, combined-cycle technology electric power generators, and the disadvantage of the high tax should be removed as an incentive to utilities and private industry to construct and operate high-efficiency generating facilities; and

"(8) Other manufacturers in the state enjoy a tax reduction on natural gas used in manufacturing, and these high-efficiency, combined-cycle technology electric power generators that manufacture electricity for resale on the wholesale market should be granted the same exemption as other manufacturers."

The amendments to this section by Acts 2011, No. 983, § 7, are superseded by the amendments to this section by Acts 2011, No. 754, § 2, pursuant to Acts 2011, No. 983, § 23.

Publisher's Notes. For text of section effective until July 1, 2014, see the preceding version.

Amendments. The 2009 amendment by No. 655 added (g).

The 2009 amendment by identical acts Nos. 691 and 695 substituted "seven-eighths" for "seven-eights" in (a)(2), inserted (a)(3), and redesignated the subsequent subdivisions accordingly.

The 2011 amendment by No. 754 substituted "26-52-302" for "26-52-302(a)-(d)" in (a)(1) and (a)(6)(B); inserted present (a)(4) and redesignated the remaining subdivisions accordingly; rewrote (b); added present (c) and redesignated the remaining subsections accordingly; in (d), deleted "in accordance with the rules issued" following "established" and substituted "subsection (f)" for "subsection (e)"; and deleted "have and be invested with full power and authority to" preceding "promulgate" in (f).

The 2011 amendment by No. 983, in (a)(1), deleted "Beginning July 1, 2007" at the beginning and substituted "three and one-eighth percent (3⅛%)" for "four and three-eighths percent (4.375%)"; deleted (a)(2) and (a)(3)(A) and redesignated (a)(3)(B)(i) through (iii) as (a)(2)(A) through (C) and (a)(3)(C)(i) and (ii) as (a)(3)(A) and (B); substituted "subdivision (a)(1)" for "subdivision (a)(3)(A)" in (a)(2)(A); in (a)(2)(B), substituted "subdivision (a)(2)(A)" for "subdivision (a)(3)(B)(i)," "§ 26-53-148(a)(2)" for "§ 26-53-148(a)(3)(B)," and "this section and § 26-53-148" for "Acts 2007, No. 185, as well as the additional reduction provided by Acts 2009, No. 695"; substituted "subdivision (a)(2)(B)" for "subdivision (a)(3)(B)(ii)" in (a)(2)(C); in (a)(3)(A), substituted "subdivision (a)(1)" for "subdivision (a)(3)(A)" and "subdivision (a)(2)" for "subdivision (a)(3)(B)"; and substituted "subdivision (a)(3)(A)" for "subdivision (a)(3)(C)(i)" in (a)(3)(B).

The 2013 amendment redesignated former (a)(1) as present (a)(1)(A), and substituted "July 1, 2014" for "July 1, 2007" and "one percent (1%)" for "four and three-eighths percent (4.375%)"; deleted (a)(2) through (a)(4), and redesignated former (a)(5) through (a)(7) as present (a)(2) through (a)(4); inserted (a)(1)(B)(i) and (a)(1)(B)(ii); substituted "Director of the Department of Finance and Administration" for "director" in present (a)(2); substituted "are" for "shall be" in present

(a)(3)(B); inserted "or sector 115111" in (b)(1); in (c)(1), inserted "otherwise," and substituted "this subsection" for "subdivision (c)(2)(C) of this section"; substituted "one-eighth" for "one-eighths" in (c)(2)(A) and (c)(2)(B); added (c)(2)(D); deleted (c)(3); and redesignated former (c)(4) as present (c)(3), and substituted "stated" for "set out."

Effective Dates. Acts 2013, No. 1411, § 7: July 1, 2014, by its own terms.

26-52-322. Withdrawals from stock.

(a) As used in this section, "withdrawal from stock" means the withdrawal or use of goods, wares, merchandise, or tangible personal property from an established business or from the stock in trade of the established reserves of an established business for consumption or use in the established business or by any other person.

(b)(1) The gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., are levied on a withdrawal from stock.

(2) For purposes of calculating the gross receipts tax or the compensating use tax under subdivision (b)(1) of this section, the gross receipts or gross proceeds for a withdrawal from stock is the value of any goods, wares, merchandise, or tangible personal property withdrawn.

(c) The Director of the Department of Finance and Administration may promulgate rules to implement this section.

History. Acts 2009, No. 384, § 5.

Subchapter 4 — Exemptions

Effective Dates. Acts 2009, No. 384, § 15: Mar. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law require amendment to provide consistency with the Streamlined Sales and Use Tax Agreement, that a withdrawal from stock is subject to gross receipts tax under current law, that clarification is needed to ensure that the original legislative intent is fulfilled, and that this act is immediately necessary to prevent possible confusion among the taxpayers of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 767, § 2: July 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that county governments that use county owned or county controlled aircraft for law enforcement purposes should be exempt from paying Arkansas sales and use tax on thermal imagining equipment purchased for law enforcement purposes; and that for the effective administration of this act it should be come effective on July 1, 2009. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009."

Acts 2009, No. 1205, § 2: Apr. 7, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that farmers have a primary harvesting season that begins in early Spring and continues throughout the Summer and Fall; that farmers' markets begin to open and sell their produce in early Spring and sell continuously throughout the Spring, Summer, and Fall; that in order for the farmers to reap the benefit of their labors during this growing and harvesting season this act must be enacted with all due haste. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 1208, § 3: Apr. 7, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that differences of opinion have developed between the Department of Finance and Administration and Arkansas manufacturers concerning the meaning of important sections of the manufacturing machinery and equipment sales and use tax exemption, including particularly the exemption for the purchase and installation of machinery and equipment to modernize and improve the efficiency of existing machinery and equipment, expand production or create new jobs that may not require the replacement of machines in their entirety, as well as the sales and use tax exemption for dies and molds used directly in manufacturing; that it is critical to encourage manufacturers to modernize and retool their plants as economically as possible in order to remain competitive and preserve Arkansas jobs; and that clarifications to confirm the intent and purpose of the manufacturing machinery and equipment sales and use tax exemption is appropriate. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 757, § 2: Mar. 29, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that clothing school children and buying school supplies is very costly; that the cost of these items is always increasing; that to help defray the cost of purchasing these items, a sales tax holiday is necessary; and that this act

is immediately necessary to ensure that families are able to enjoy this exemption when purchasing school clothes and supplies for school. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 824, § 2, effective July 27, 2011, provided: "Section 1 of this act is effective on the first day of the calendar quarter following the effective date of this act."

Acts 2011, No. 1058, § 6: July 1, 2012.

Acts 2013, No. 233, § 3: Oct. 1 2013. Effective date clause provided: "Sections 1 and 2 of this act are effective on the first day of the calendar quarter following the effective date of this act."

Acts 2013, No. 1392, § 2: Oct. 1, 2013. Effective date clause provided: "Section 1 of this act is effective on the first day of the calendar quarter following the effective date of this act."

Acts 2013, No. 1401, § 2: July 1, 2014. Effective date clause provided: "Section 1 of this act is effective on and after July 1, 2014."

Acts 2013, No. 1402, § 2: July 1, 2014. Effective date clause provided: "This act is effective on and after July 1, 2014."

Acts 2013, No. 1404, § 4: July 1, 2014. Effective date clause provided: "This act is effective on and after July 1, 2014."

Acts 2013, No. 1414, § 2: July 1, 2014. Effective date clause provided: "This act is effective on and after July 1, 2014."

Acts 2013, No. 1419, § 2: Oct. 1, 2013. Effective date clause provided: "Section 1 of this act is effective on the first day of the calendar quarter following the effective date of this act."

26-52-401. Various products and services.

There is specifically exempted from the tax imposed by this chapter the following:

(1) The gross receipts or gross proceeds derived from the sale of tangible personal property or services by churches, except when the organizations may be engaged in business for profit;

(2) The gross receipts or gross proceeds derived from the sale of tangible personal property or service by charitable organizations, except when the organizations may be engaged in business for profit;

(3) Gross receipts or gross proceeds derived from the sale of food, food ingredients, or prepared food in public, common, high school, or college cafeterias and lunch rooms operated primarily for teachers and pupils, not operated primarily for the public and not operated for profit;

(4) Gross receipts or gross proceeds derived from the sale of newspapers;

(5) Gross receipts or gross proceeds derived from sales to the United States Government;

(6) Gross receipts or gross proceeds derived from the sale of motor vehicles and adaptive equipment to disabled veterans who have purchased the motor vehicles or adaptive equipment with the financial assistance of the United States Department of Veterans Affairs as provided under 38 U.S.C. § 3901 et seq.;

(7) Gross receipts or gross proceeds derived from the sale of tangible personal property including but not limited to office supplies; office

equipment; program items at camp such as bows, arrows, and rope; rifles for rifle range and other rifle items; food, food ingredients, or prepared food for camp; lumber and supplies used in camp maintenance; camp equipment; first aid supplies for camp; the leasing of cars used in promoting scouting; or services to the Boy Scouts of America chartered by the United States Congress in 1916 or the Girl Scouts of the United States of America chartered by the United States Congress in 1950 or any of the scout councils in the State of Arkansas;

(8) Gross receipts or gross proceeds derived from sales of tangible personal property or services to the:

(A) Boys Clubs of America chartered by the United States Congress in 1956 or any local councils or organizations of the Boys Clubs of America; or

(B) Girls Clubs of America or any local councils or organizations of the Girls Clubs of America;

(9) Gross receipts or gross proceeds derived from sales of tangible personal property or services to the Poets' Roundtable of Arkansas;

(10) Gross receipts or gross proceeds derived from sales of tangible personal property or services to 4-H clubs and FFA clubs in this state, to the Arkansas 4-H Foundation, the Arkansas Future Farmers of America Foundation, and the Arkansas Future Farmers of America Association;

(11)(A) Gross receipts or gross proceeds derived from the sale of:

(i) Gasoline or motor vehicle fuel on which the motor vehicle fuel or gasoline tax has been paid to the State of Arkansas;

(ii) Special fuel or petroleum products sold for consumption by vessels, barges, and other commercial watercraft and railroads;

(iii) Dyed distillate special fuel on which the tax levied by § 26-56-224 has been paid; and

(iv)*(a)* Biodiesel fuel.

(b) As used in this subdivision (11)(A)(iv), "biodiesel fuel" means a diesel fuel substitute produced from nonpetroleum renewable resources.

(B) Nothing in this subdivision (11) shall exempt gasoline from the wholesale gross receipts tax imposed pursuant to Acts 1995, No. 1005;

(12)(A) Gross receipts or gross proceeds derived from sales for resale to persons regularly engaged in the business of reselling the articles purchased, whether within or without the state if the sales within the state are made to persons to whom gross receipts tax permits have been issued as provided in § 26-52-202.

(B)(i) Goods, wares, merchandise, and property sold for use in manufacturing, compounding, processing, assembling, or preparing for sale can be classified as having been sold for the purposes of resale or the subject matter of resale only in the event the goods, wares, merchandise, or property becomes a recognizable integral part of the manufactured, compounded, processed, assembled, or prepared products.

(ii) The sales of goods, wares, merchandise, and property not conforming to this requirement are classified for the purpose of this act as being "for consumption or use";

(13) Gross proceeds derived from sales of advertising space in newspapers and publications and billboard advertising services;

(14) Gross receipts or gross proceeds derived from sales of publications sold through regular subscription, regardless of the type or content of the publication or the place printed or published;

(15) Gross receipts or gross proceeds derived from gate admission fees at state, district, county, or township fairs or at any rodeo if the gross receipts or gross proceeds derived from gate admission fees to the rodeo are used exclusively for the improvement, maintenance, and operation of the rodeo and if no part of the net earnings of the state, district, county, or township fair or rodeo inures to the benefit of any private stockholder or individual;

(16) Gross receipts or gross proceeds derived from sales for resale which the state is prohibited by the Constitution and laws of the United States from taxing or further taxing, or which the state is prohibited by the Arkansas Constitution from taxing or further taxing;

(17) Gross receipts or gross proceeds derived from isolated sales not made by an established business;

(18)(A) Gross receipts or gross proceeds derived from the sale of:

(i) Any cotton or seed cotton or lint cotton or baled cotton, whether compressed or not, or cotton seed in its original condition;

(ii) Seed for use in the commercial production of an agricultural product or of seed;

(iii) Raw products from the farm, orchard, or garden, when the sale is made by the producer of the raw products directly to the consumer and user, including the sale of raw products from a farm, orchard, or garden that are produced and sold by the producer of the raw products at a farmers' market, including without limitation cut or dried flowers, plants, vegetables, fruits, nuts, and herbs;

(iv) Livestock, poultry, poultry products, and dairy products of producers owning not more than five (5) cows; and

(v) Baby chickens.

(B)(i) An exemption granted by this subdivision (18) shall not apply when the articles are sold at or from an established business, even though sold by the producer of the articles.

(ii) A farmers' market is not an established business if the farmers' market sells raw product directly to the user of the raw product and the farmers' market is:

(a) Comprised of one (1) or more producers of a raw product;

(b) Operated seasonally; and

(c) Held out-of-doors or in a public space.

(C)(i) However, nothing in subdivision (18)(B) of this section shall be construed to mean that the gross receipts or gross proceeds received by the producer from the sale of the products mentioned in this subdivision (18) shall be taxable when the producer sells com-

modities produced on his or her farm at an established business located on his or her farm.

(ii) The provisions of this subdivision (18) are intended to exempt the sale by livestock producers of livestock sold at special livestock sales.

(iii) The provisions of this subdivision (18) shall not be construed to exempt sales of dairy products by any other businesses.

(iv) The provisions of this subdivision (18) shall not be construed to exempt sales by florists and nurserymen. As used in this subdivision (18), "nurserymen" does not include Christmas tree farmers;

(19) Gross receipts or gross proceeds derived from the sale of food, food ingredients, or prepared food to governmental agencies for free distribution to any public, penal, and eleemosynary institutions or for free distribution to the poor and needy;

(20)(A) Gross receipts or gross proceeds derived from the rental or sale of medical equipment, for the benefit of persons enrolled in and eligible for Medicare or Medicaid programs as contained in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395 et seq. and 1396 et seq., respectively, or successor programs or any other present or future United States Government subsidized health care program, by medical equipment suppliers doing business in the State of Arkansas.

(B) However, this exemption applies only to receipts or proceeds received directly or indirectly through an organization administering such program in the State of Arkansas pursuant to a contract with the United States Government in accordance with the terms thereof;

(21)(A) Gross receipts or gross proceeds derived from the sale of any tangible personal property or services as specifically provided in this subdivision (21) to any hospital or sanitarium operated for charitable and nonprofit purposes or any nonprofit organization whose sole purpose is to provide temporary housing to the family members of patients in a hospital or sanitarium.

(B) However, gross proceeds and gross receipts derived from the sale of materials used in the original construction or repair or further extension of the hospital or sanitarium or temporary housing facilities, except state-owned tax-supported hospitals and sanitariums, shall not be exempt from this chapter;

(22) Gross receipts or gross proceeds derived from the sale of used tangible personal property when the used property was:

(A) Traded in and accepted by the seller as part of the sale of other tangible personal property; and

(B)(i) The state gross receipts tax was collected and paid on the total amount of consideration for the sale of the other tangible personal property without any deduction or credit for the value of the used tangible personal property.

(ii) The condition that the state gross receipts tax was collected and paid on the total amount of consideration is not required for entitlement to this exemption when the sale of the other tangible

personal property was otherwise exempt under other provisions of this chapter.

(iii) This subdivision (22) does not apply to transactions involving used automobiles under § 26-52-510(b) or used aircraft under § 26-52-505;

(23) Gross receipts or gross proceeds derived from the sale of unprocessed crude oil;

(24) The gross receipts or gross proceeds derived from the sale of electricity used in the manufacture of aluminum metal by the electrolytic reduction process;

(25) The gross receipts or gross proceeds derived from the sale of articles sold on the premises of the Arkansas State Veterans Home;

(26) That portion of the gross receipts or gross proceeds derived from the sale of automobile parts which constitute core charges which are received for the purpose of securing a trade-in for the article purchased, except that when the article is not traded in, then the tax is due on the core charge;

(27)(A) Gross receipts and gross proceeds derived from the sale of:

(i) Tangible personal property lawfully purchased with food stamps or food coupons issued in accordance with the Food Stamp Act of 1964, 7 U.S.C. § 2011 et seq.;

(ii) Tangible personal property lawfully purchased with food instruments or vouchers issued under the Special Supplemental Nutrition Program for Women, Infants, and Children in accordance with Section 17 of the Child Nutrition Act of 1966, 42 U.S.C § 1786, as amended; and

(iii) Food or food ingredients purchased through bids under the Special Supplemental Nutrition Program for Women, Infants, and Children.

(B) If consideration other than food stamps, food coupons, food instruments, or vouchers is used in any sale, that portion of the sale shall be fully taxable.

(C) The tax exemption provided by this subdivision (27) shall expire if the exemption becomes no longer required for full participation in the food stamp program and the Special Supplemental Nutrition Program for Women, Infants, and Children;

(28)(A) Parts or other tangible personal property incorporated into or which become a part of commercial jet aircraft components, or commercial jet aircraft subcomponents.

(B) As used in this subdivision (28) "commercial jet aircraft" means any commercial, military, private, or other turbine or turbo jet aircraft having a certified maximum take-off weight of more than twelve thousand five hundred pounds (12,500 lbs.);

(29) Gross receipts or gross proceeds derived from the sale of any tangible personal property specifically exempted from taxation by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.;

(30)(A) The gross receipts proceeds charged to a consumer or user for the transfer of fill material by a business engaged in transporting or delivering fill material, provided:

(i) Such fill material was obtained free of charge by a business engaged in transporting or delivering fill material; and

(ii) The charge to the consumer or user is only for delivery.

(B) Any business claiming the exemption under subdivision (30)(A) of this section shall keep suitable records necessary to determine that fill material was obtained without charge;

(31) Gross receipts or gross proceeds derived from sales of tangible personal property or services to Habitat for Humanity;

(32) Gross receipts or gross proceeds derived from the long-term lease, thirty (30) days or more, of commercial trucks used for interstate transportation of goods if the trucks are registered under an international registration plan similar to § 27-14-501 et seq. and administered by another state which offers reciprocal privileges for vehicles registered under § 27-14-501 et seq.;

(33) Gross receipts or gross proceeds derived from sales of tangible personal property or services to The Salvation Army;

(34) Gross receipts or gross proceeds derived from sales of tangible personal property and services to Heifer International, Inc.;

(35)(A) Gross receipts or gross proceeds derived from the sale of catalysts, chemicals, reagents, and solutions which are consumed or used:

(i) In producing, manufacturing, fabricating, processing, or finishing articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas; and

(ii) By manufacturing or processing plants or facilities in the state to prevent or reduce air or water pollution or contamination which might otherwise result from the operation of the plant or facility.

(B) As used in this subdivision (35), "manufacturing" and "processing" mean the same as set forth in § 26-52-402(b);

(36) Gross receipts or gross proceeds derived from the sale of:

(A) Fuel packaging materials to a person engaged in the business of processing hazardous and non-hazardous waste materials into fuel products at a facility permitted by the Arkansas Department of Environmental Quality for hazardous waste treatment; and

(B) Machinery and equipment, including analytical equipment and chemicals used directly in processing and packaging of hazardous and non-hazardous waste materials into fuel products at a facility permitted by the Arkansas Department of Environmental Quality for hazardous waste treatment;

(37) Gross receipts or gross proceeds derived from sales of tangible personal property or services to the Arkansas Symphony Orchestra Society, Inc.;

(38) Gross receipts or gross proceeds from the sale of any good, ware, merchandise, or tangible personal property withdrawn or used from an established business or from the stock in trade of the established reserves for consumption or use in an established business or by any other person if the good, ware, merchandise, or tangible personal property withdrawn or used is donated to a National Guard member,

emergency service worker, or volunteer providing services to a county which has been declared a disaster area by the Governor; and

(39) Gross receipts or gross proceeds derived from sales of tangible personal property or services to the Arkansas Black Hall of Fame Foundation, Inc.

History. Acts 1941, No. 386, § 4; 1947, No. 102, § 1; 1949, No. 15, § 1; 1949, No. 152, § 1; 1961, No. 213, § 1; 1965, No. 133, § 1; 1967, No. 113, § 1; 1968 (1st Ex. Sess.), No. 5, § 1; 1973, No. 403, § 1; 1975, No. 922, § 1; 1975, No. 927, § 1; 1975 (Extended Sess., 1976), No. 1013, § 1; 1977, No. 252, § 1; 1977, No. 382, § 1; 1979, No. 324, § 16; 1979, No. 630, § 1; 1981, No. 706, § 1; 1985, No. 518, § 1; A.S.A. 1947, § 84-1904; Acts 1987, No. 7, § 1; 1987, No. 986, §§ 1-3; 1987, No. 1033, §§ 11, 12; 1989, No. 753, § 1; 1991, No. 458, § 2; 1992 (1st Ex. Sess.), No. 58, § 3; 1992 (1st Ex. Sess.), No. 61, § 3; 1993, No. 617, §§ 1, 2; 1993, No. 820, § 1; 1993, No. 987, § 1; 1993, No. 1183, § 1; 1995, No. 504, § 1; 1995, No. 516, § 1; 1995, No. 850, § 2; 1995, No. 1005, § 2; 1997, No. 603, § 1; 1997, No. 1222, § 1; 1999, No. 854, § 1; 2001, No. 1683, § 1; 2005, No. 2132, § 1; 2007, No. 87, § 1; 2007, No. 181, §§ 15-19; 2007, No. 860, § 3; 2009, No. 655, § 16; 2009, No. 1205, § 1; 2011, No. 983, § 8; 2011, No. 998, § 2.

A.C.R.C. Notes. Acts 2011, No. 998, § 1, provided: "Legislative intent. It is found and declared by the General Assembly that the Arkansas Black Hall of Fame Foundation, Inc., is a non-profit organization that:

"(1) Has reconnected distinguished Arkansans with their home state and presents a positive image of our state to the nation and to the world;

"(2) Has a significant economic impact in terms of resources invested in putting on the annual Arkansas Black Hall of Fame Induction Ceremony and promotes tourism by attracting people from out-of-state to spend money for hotel, transportation, food, and other entertainment;

"(3) Has an ongoing partnership with the Arkansas Department of Parks and Tourism, and maintains a significant partnership with the Department of Arkansas Heritage and the Mosaic Templars Cultural Center, and provides an annual public program connected with the Arkansas Black Hall of Fame Distinguished Laureate Series; and

"(4) Awards grants to non-profit organizations and works to improve the health, wellness, youth development, education, and economic development of Arkansas citizens in over forty (40) counties in the Delta and other underserved communities throughout the state."

Amendments. The 2009 amendment by No. 655, in (22)(B)(iii), inserted "used manufactured homes, or used modular homes," substituted "§ 26-52-801 et seq." for "§ 26-52-504 [repealed]," and made related and minor stylistic changes.

The 2009 amendment by No. 1205 inserted "including the sale ... fruits, nuts, and herbs" in (18)(A)(iii), rewrote (18)(B)(ii), and made a related change.

The 2011 amendment by No. 983 deleted "used mobile homes, used manufactured homes, or used modular homes under § 26-52-801 et seq." following "§ 26-52-510(b)" in (22)(B)(iii).

The 2011 amendment by No. 998 added (39).

Effective Dates. Acts 2011, No. 998, § 3: effective on the first day of the calendar quarter following the effective date of the act [Oct. 1, 2011].

26-52-402. Certain machinery and equipment.

(a) There is specifically exempted from the tax imposed by this chapter the following:

(1)(A) Gross receipts or gross proceeds derived from the sale of tangible personal property consisting of machinery and equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manu-

facturing or processing plants or facilities in the State of Arkansas, including facilities and plants for manufacturing of feed, processing of poultry or eggs, or both, and livestock, and the hatching of poultry, but only to the extent that the machinery and equipment is purchased and used for the purposes set forth in this subdivision (a)(1).

(B) The machinery and equipment will be exempt under this subdivision (a)(1) if it is purchased and used to create new manufacturing or processing plants or facilities within this state or to expand existing manufacturing or processing plants or facilities within this state;

(2)(A) Machinery purchased to replace existing machinery and used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in this state will be exempt under this subdivision (a)(2).

(B)(i) As used in subdivision (a)(2)(A) of this section, "machinery purchased to replace existing machinery" means that substantially all of the machinery and equipment required to perform an essential function is physically replaced with new machinery.

(ii) As used in subdivision (a)(2)(B)(i) of this section, "substantially" is intended to exclude routine repairs and maintenance and partial replacements that do not improve efficiency or extend the useful life of the entire machine, but it is not intended to mean that foundations and minor components that can be economically adapted, rebuilt, or refurbished must be completely replaced when replacement would be more expensive or impracticable than adapting, rebuilding, or refurbishing the old foundation or minor components.

(C) It is the intent of this subdivision (a)(2) to provide the exemptions in subdivision (a)(1) of this section and this subdivision (a)(2) as incentives to encourage the location of new manufacturing plants in Arkansas, the expansion of existing manufacturing plants in Arkansas, and the modernization of existing manufacturing plants in Arkansas through the replacement of old, inefficient, or technologically obsolete machinery and equipment; and

(3)(A) Gross receipts or gross proceeds derived from the sale of tangible personal property consisting of machinery and equipment required by state or federal law or regulations to be installed and utilized by manufacturing and processing plants or facilities, cities, or towns in this state to prevent or reduce air or water pollution or contamination that might otherwise result from the operation of the plant, facility, city, or town.

(B) As used in this subdivision (a)(3), "machinery and equipment required by state or federal law or regulations to be installed and utilized by manufacturing and processing plants or facilities" includes:

(i) Machinery and equipment required by state or federal law or regulations to be used in the refining of petroleum-based products to remove sulfur pollutants from the refined product; and

(ii) Any repair parts and repair labor for machinery or equipment required by state or federal law or regulations to be used in the refining of petroleum-based products to remove sulfur pollutants from the refined product.

(4) [Repealed.]

(b) As used in this section, "manufacturing" or "processing" refer to and include those operations commonly understood within their ordinary meaning and shall also include:

(1) Mining;

(2) Quarrying;

(3) Refining;

(4) Extracting oil and gas;

(5) Cotton ginning;

(6) Drying of rice, soybeans, and other grains;

(7) Manufacturing of feed;

(8) Processing of poultry or eggs and livestock and the hatching of poultry;

(9) Printing of all kinds, types, and characters, including the services of overprinting and photographic processing incidental to printing;

(10) Processing of scrap metal into grades and bales for further processing into steel and other metals;

(11) Retreading of tires for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors;

(12) Rebuilding or remanufacturing of used parts for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors if the rebuilt or remanufactured parts are not sold directly to the consumer but are sold for resale; and

(13) Producing of protective coatings which increase the quality and durability of a finished product.

(c)(1)(A) It is the intent of this section to exempt only such machinery and equipment as shall be used directly in the actual manufacturing or processing operation at any time from the initial stage when actual manufacturing or processing begins through the completion of the finished article of commerce and the packaging of the finished end product.

(B) As used in this subsection, "directly" is used to limit the exemption to only the machinery and equipment used in actual production during processing, fabricating, or assembling raw materials or semifinished materials into the form in which such personal property is to be sold in the commercial market.

(2) For purposes of this subsection, the following definitions, specific inclusions, and specific exclusions shall apply and represent the intent of the General Assembly as to its interpretation of the term "used directly":

(A)(i) Machinery and equipment used in actual production includes machinery and equipment that meet all other applicable requirements and which cause a recognizable and measurable me-

chanical, chemical, electrical, or electronic action to take place as a necessary and integral part of manufacturing, the absence of which would cause the manufacturing operation to cease.

(ii) "Directly" does not mean that the machinery and equipment must come into direct physical contact with any of the materials that become necessary and integral parts of the finished product.

(iii) Machinery and equipment which handle raw, semifinished, or finished materials or property before the manufacturing process begins are not used directly in the manufacturing process.

(iv) Machinery and equipment which are necessary for purposes of storing the finished product are not used directly in the manufacturing process.

(v) Machinery and equipment used to transport or handle a product while manufacturing is taking place are used directly;

(B) Machinery and equipment used directly in the manufacturing process includes without limitation the following:

(i) Molds, frames, cavities, and forms that determine the physical characteristics of the finished product or its packaging material at any stage of the manufacturing process;

(ii) Dies, tools, and devices attached to or a part of a unit of machinery that determine the physical characteristics of the finished product or its packaging material at any stage of the manufacturing process;

(iii) Testing equipment to measure the quality of the finished product at any stage of the manufacturing process;

(iv) Computers and related peripheral equipment that directly control or measure the manufacturing process; and

(v) Machinery and equipment that produce steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process but which are consumed during the course of the manufacturing process and do not become necessary and integral parts of the finished product;

(C) Machinery and equipment "used directly" in the manufacturing process shall not include the following:

(i) Hand tools;

(ii) Machinery, equipment, and tools used in maintaining and repairing any type of machinery and equipment;

(iii) Transportation equipment, including conveyors, used solely before or after the manufacturing process has been started or completed;

(iv) Office machines and equipment including computers and related peripheral equipment not directly used in controlling or measuring the manufacturing process;

(v) Buildings;

(vi) Machinery and equipment used in administrative, accounting, sales, or other such activities of the business;

(vii) All furniture;

(viii) All other machinery and equipment not used directly in manufacturing or processing operations as defined in this section; and

(ix) Machinery and equipment used by a manufacturer to produce or repair replacement dies, molds, repair parts, or replacement parts used or consumed in the manufacturer's own manufacturing process.

(d) The Director of the Department of Finance and Administration may promulgate rules and regulations for the orderly and efficient administration of this section.

History. Acts 1941, No. 386, § 4; 1967, No. 113, § 1; 1968 (1st Ex. Sess.), No. 5, § 1; 1975, No. 760, § 1; 1983, No. 791, § 1; 1983, No. 870, §§ 1, 3; 1985, No. 492, § 1; 1985, No. 543, § 1; 1985, No. 841, § 1; A.S.A. 1947, §§ 84-1904, 84-1904n; Acts 1993, No. 1250, § 1; 1997, No. 1233, § 1; 1999, No. 854, § 2; 1999, No. 1110, § 1; 2009, No. 655, § 17; 2009, No. 1208, § 1; 2013, No. 233, § 1.

Amendments. The 2009 amendment by No. 655 deleted (a)(4).

The 2009 amendment by No. 1208 substituted "frames, cavities, and forms" for "and dies" in (c)(2)(B)(i), inserted (c)(2)(B)(ii) and redesignated the subsequent subdivisions accordingly, inserted "at any stage of the manufacturing process" in (c)(2)(B)(i) and (c)(2)(B)(iii), and made related and minor stylistic changes.

The 2013 amendment redesignated former (3) as (3)(A); inserted "or federal," "cities, or towns," and "city or town" in (3)(A); and added (3)(B).

Effective Dates. Acts 2013, No. 233, § 3: Oct. 1, 2013. Effective date clause provided: "Sections 1 and 2 of this act are effective on the first day of the calendar quarter following the effective date of this act."

CASE NOTES

Machinery and Equipment.

Circuit court did not err in determining that the stickyback tape used by the taxpayer was equipment that was exempt from sales taxes; it met the statutory requirement under subdivision (c)(1)(A) of this section of equipment used directly in the actual manufacturing or processing operation and was necessary and integral, as provided under subdivision (c)(2)(A)(i). Weiss v. Bryce Co., LLC, 2009 Ark. 412, 330 S.W.3d 756 (2009).

26-52-403. Farm equipment and machinery.

(a) As used in this section:

(1)(A) "Farm equipment and machinery" means implements used exclusively and directly in farming.

(B) "Farm equipment and machinery" includes:

(i) Irrigation pipe used to carry water from an irrigation well to the crops produced in farming regardless of whether the irrigation pipe is used above ground or is buried underground; and

(ii) Implements used to harvest crops produced in farming by others.

(C) However, "farm equipment and machinery" shall not include implements used in the production and severance of timber, motor vehicles of a type subject to registration, airplanes, or hand tools; and

(2) "Farming" means the agricultural production of food or fiber as a business or the agricultural production of grass sod or nursery products as a business.

(b) The gross receipts or gross proceeds derived from the sale of new and used farm equipment and machinery are exempt from the Arkansas gross receipts tax levied by this chapter.

(c) The Director of the Department of Finance and Administration shall promulgate rules and prescribe forms for claiming the exemption provided by this section.

History. Acts 1981, No. 432, § 1; A.S.A. 1947, § 84-1904.10; Acts 1987, No. 350, § 1; 1995, No. 587, § 1; 1999, No. 1033, § 1; 2005, No. 1994, § 208; 2007, No. 181, § 20; 2009, No. 655, § 18.

Amendments. The 2009 amendment, in (b), inserted "gross receipts or gross proceeds derived from," substituted "this chapter" for "§ 26-52-301(1), (2), (3)(A), (3)(B)(i)-(iii), (4), and (5)," and made minor stylistic changes.

26-52-405. Products used for livestock, poultry, and agricultural production.

The gross receipts or gross proceeds derived from sales of the following are exempt from the Arkansas gross receipts tax levied by this chapter:

(1) Agricultural fertilizer;

(2) Agricultural limestone;

(3) Agricultural chemicals, including, but not limited to:

(A) Agricultural pesticides and herbicides used in commercial production of agricultural products;

(B) Vaccines, medications, and medicinal preparations used in treating livestock and poultry being grown for commercial purposes; and

(C) Chemicals, nutrients, and other ingredients used in the commercial production of yeast; and

(4) Water purchased from a public surface-water delivery project to:

(A) Reduce or replace water used for in-ground irrigation; or

(B) Reduce dependence on ground water used for agriculture.

History. Acts 1973, No. 68, § 1; 1985, No. 1013, § 1; A.S.A. 1947, § 84-1905.2; Acts 1993, No. 98, § 1; 1993, No. 151, § 1; 1995, No. 1296, § 85; 2011, No. 824, § 1.

Amendments. The 2011 amendment added (4).

Effective Dates. Acts 2011, No. 824, § 2, effective July 27, 2011, provided: "Section 1 of this act is effective on the first day of the calendar quarter following the effective date of this act."

26-52-408. Certain bagging, packaging, or tying materials. [Effective October 1, 2013.]

The gross receipts or gross proceeds derived from the sale of the following are exempt from the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.:

(1) Bagging and other packaging and tie materials sold to and used by cotton gins in Arkansas for packaging or tying baled cotton;

(2) Twine that is used in the production of tomato crops; and

(3)(A) Expendable supplies for farm machinery that are used for baling, packaging, tying, wrapping, or sealing animal feed products.

(B) As used in this subdivision (3):

(i) "Animal feed products" means hay, straw, grass, fodder, silage, and similar products;

(ii)*(a)* "Expendable supplies for farm machinery" means supplies that are:

(1) Used for baling, packaging, tying, wrapping, or sealing animal feed products; and

(2) Consumed during use or disposed of after use.

(b) "Expendable supplies for farm machinery" includes without limitation baling twine, net wrap, silage wrap, and cotton wrap.

(c) "Expendable supplies for farm machinery" does not include supplies and parts used for maintenance, repair, or replacement purposes;

(iii)*(a)* "Farm machinery" means implements used exclusively and directly in farming.

(b) "Farm machinery" includes without limitation implements used to harvest crops produced in farming by others.

(c) "Farm machinery" does not include implements used in the production and severance of timber, motor vehicles of a type subject to registration, airplanes, or hand tools; and

(iv) "Farming" means the agricultural production of food or fiber as a business.

History. Acts 1975, No. 759, § 1; A.S.A. 1947, § 84-1904.1; Acts 2013, No. 1392, § 1.

Publisher's Notes. For version of section effective until October 1, 2013, see the bound volume.

Amendments. The 2013 amendment subdivided former (a) as present (a)(1)-(a)(3); rewrote present (a)(1) and (a)(2), and added (a)(3).

Effective Dates. Acts 2013, No. 1392, § 2: Oct. 1, 2013. Effective date clause provided: "Section 1 of this act is effective on the first day of the calendar quarter following the effective date of this act."

26-52-416. Electricity sold to low-income households.

(a) The gross receipts or gross proceeds derived from the sale of the first five hundred kilowatt hours (500 kWh) of electricity per month and the total franchise taxes billed to each residential customer whose household income is no more than twelve thousand dollars ($12,000) per year are exempt from the Arkansas gross receipts tax levied by this chapter and all other state excise taxes that would otherwise be levied on the gross receipts or gross proceeds derived from the sale and the total franchise taxes.

(b) As used in this section:

(1) "Household income" means the combined income received by members of a household during a calendar year; and

(2)(A) "Income" means gross income as defined in the Income Tax Act of 1929, § 26-51-101 et seq., less deductions allowed under § 26-51-423.

(B) "Income" includes:

(i) Alimony;

(ii) Support money;

(iii) Cash public assistance and relief;

(iv) The gross amount of any pension or annuity, including all monetary retirement benefits from whatever source derived, including without limitation railroad retirement benefits, all payments received under the federal Social Security Act, and veterans' disability pensions;

(v) All dividends and interest from whatever source derived not included in gross income;

(vi) Workers' compensation benefits; and

(vii) The gross amount of "loss of time insurance".

(C) "Income" does not include:

(i) Gifts from nongovernmental sources;

(ii) Surplus food;

(iii) In-kind relief supplied by a governmental agency; or

(iv) For a World War I veteran of the United States Armed Forces or the widow of a World War I veteran of the United States Armed Forces, federal or state retirement benefits, pension benefits, disability benefits, railroad retirement benefits, or social security benefits.

(c) The exemption in this section applies to sales by all electric utilities operating in this state, whether investor-owned utilities, electric cooperative corporations created or existing under the Electric Cooperative Corporation Act, § 23-18-301 et seq., or municipally owned electric utilities.

(d) On forms provided by the Director of the Department of Finance and Administration, a residential customer qualifying for the exemption in this section shall notify the electric utility providing service to the residential customer of the residential customer's intention to claim the exemption in this section.

(e)(1) After a residential customer has qualified for the exemption in this section, an additional application is not required.

(2) When a residential customer who has qualified for the exemption in this section has household income exceeding the twelve-thousand-dollar limit, the residential customer is disqualified from the exemption in this section and shall notify the electric utility on forms provided by the director. The notice form shall be mailed to the electric utility on or before March 1 of the year following the year the household income exceeds twelve thousand dollars ($12,000).

(f)(1) If a residential customer does not notify the electric utility as provided in subsection (e) of this section and continues to receive the exemption in this section after his or her household income exceeds twelve thousand dollars ($12,000), the residential customer is liable for the amount of the tax exemption received after March 1 of the year

following the year the household income exceeds twelve thousand dollars ($12,000).

(2) The electric utility shall bill a residential customer for the amount of tax due as a result of the residential customer's disqualification under this section and remit the tax to the director.

History. Acts 1983 (1st Ex. Sess.), No. 120, §§ 1, 2; A.S.A. 1947, §§ 84-1904.12, 84-1904.13; Acts 1991, No. 304, §§ 1, 2; 2009, No. 655, § 19.

Amendments. The 2009 amendment rewrote the section.

26-52-425. Substitute fuel for manufacturing.

(a) There is specifically exempted from the tax imposed by §§ 26-52-301 and 26-52-302, the gross receipts or gross proceeds derived from the sale of substitute fuel used in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas.

(b) As used in this section:

(1) "Manufacturing" or "processing" means the same as set out in § 26-52-402(b);

(2)(A) "Solid waste" means only solid waste as commonly understood on April 10, 1995.

(B) "Solid waste" does not include solid wood chips or other wood by-products; and

(3) "Substitute fuel" means products or materials that have been derived from tires, from municipal solid waste or other solid waste, from used motor oil, from used railroad ties, or from petroleum-based waste for use in producing heat or power by burning.

History. Acts 1993, No. 1024, § 1; 1995, No. 1134, § 1; 1995, No. 1296, § 86; 1997, No. 825, § 1; 2009, No. 655, § 20.

Amendments. The 2009 amendment rewrote (b).

26-52-431. Timber harvesting machinery, equipment, and related attachments. [Effective July 1, 2014.]

(a) The gross receipts or gross proceeds derived from the sale of machinery, new and used equipment, and related attachments that are sold to or used by a person engaged primarily in the harvesting of timber are exempt from the taxes levied by this chapter and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) The machinery, new or used equipment, and related attachments are exempt under this section only if they are:

(1) Purchased by a person whose primary activity is the harvesting of timber; and

(2) Used exclusively in the off-road activity of harvesting of timber.

(c) The exemption provided in this section does not apply to a purchase of a repair or replacement part for the machinery, new or used equipment, or related attachment.

(d) As used in this section:

(1) "Equipment" means only complete systems or units that operate exclusively and directly in the harvesting of timber;

(2) "Harvesting of timber" means the use of off-road equipment and related attachments in every forestry procedure starting with the severing of a tree from the ground through the point at which the tree or its parts in any form have been loaded in the field in or on a truck or other vehicle for transport to the place of use;

(3) "Machinery" means only complete systems or units that operate exclusively and directly in the harvesting of timber;

(4) "Off-road equipment" means skidders, feller bunchers, delimbers of all types, chippers of all types, loaders of all types, and bulldozers equipped with grapples used as skidders; and

(5) "Primary activity" means the principal business activity in which a person is engaged and to which more than fifty percent (50%) of all the resources of his or her business activities are committed.

History. Acts 1999, No. 1334, § 1; 2001, No. 622, § 1; 2007, No. 860, § 4; 2013, No. 1402, § 1.

Publisher's Notes. For version of section effective until July 1, 2014, see the bound volume.

Amendments. The 2013 amendment, in the section heading, inserted "machinery" and "and related attachments"; in (a), substituted "The gross receipts or gross proceeds derived" for "The first fifty thousand dollars ($50,000) of the purchase price," inserted "machinery, new or used", and substituted "are" for "shall be"; in the introductory language of (b), inserted "machinery, new or used" and substituted "are exempt under this section only if" for "are not exempt unless"; in (c), substituted "does" for "shall," inserted "machinery, new or used", and "or related attachment"; inserted present (d)(1) and redesignated the remaining subdivisions accordingly; in present (d)(2), deleted "Equipment used in the" from the beginning, substituted "the use of" for "all," and deleted "used" following "attachments"; deleted "or equipment" following "Machinery" in present (d)(3); deleted "and includes" following "means" in present (d)(4); inserted "business" twice in present (d)(5); and deleted (e).

Effective Dates. Acts 2013, No. 1402, § 2: July 1, 2014. Effective date clause provided: "This act is effective on and after July 1, 2014."

26-52-433. Durable medical equipment, mobility-enhancing equipment, prosthetic devices, and disposable medical supplies.

(a)(1) Gross receipts or gross proceeds derived from the rental, sale, or repair of durable medical equipment prescribed by a physician, mobility-enhancing equipment prescribed by a physician, a prosthetic device prescribed by a physician, and disposable medical supplies prescribed by a physician shall be exempt from all state and local sales and use taxes.

(2) This exemption shall apply only to durable medical equipment, mobility-enhancing equipment, a prosthetic device, and disposable medical supplies sold to a specific patient pursuant to a prescription written before the sale.

(b) As used in this section:

(1) "Disposable medical supplies" includes without limitation the following:

(A) Ostomy, urostomy, and colostomy supplies;

(B) Enemas, suppositories, and laxatives used in routine bowel care; and

(C) Disposable undergarments and linen savers;

(2)(A) "Durable medical equipment" means equipment, including repair and replacement parts for the equipment, that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury;

(iv) Is not worn in or on the body; and

(v) Is for home use.

(B) "Durable medical equipment" does not include mobility enhancing equipment;

(3)(A) "Mobility enhancing equipment" means equipment, including repair and replacement parts for the equipment, that:

(i) Is primarily and customarily used to provide or increase the ability to move from one (1) place to another and that is appropriate for use either in a home or a motor vehicle;

(ii) Is not generally used by a person with normal mobility; and

(iii) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(B) "Mobility enhancing equipment" does not include durable medical equipment;

(4) "Physician" means a person licensed under § 17-95-401 et seq.;

(5) "Prescription" means an order, formula, or recipe issued in any form and transmitted by an oral, written, electronic, or other means of transmission by a duly licensed physician or practitioner authorized to issue prescriptions under Arkansas law;

(6)(A) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:

(i) Artificially replace a missing portion of the body;

(ii) Prevent or correct physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body.

(B) "Prosthetic device" does not include corrective eyeglasses, contact lenses, and dental prostheses; and

(7) "Repair and replacement parts" includes all components or attachments used in conjunction with durable medical equipment.

(c)(1) Notwithstanding subdivision (a)(2) of this section, a patient may claim the exemption under this section for a wheelchair lift or automobile hand controls prescribed for the patient after the sale if:

(A) The wheelchair lift or automobile hand controls are purchased in conjunction with the purchase of a motor vehicle;

(B) The gross receipts or gross proceeds derived from the sale of the wheelchair lift or automobile hand controls are separately stated on the invoice or bill of sale for the purchase of the motor vehicle; and

(C) The patient has a prescription for the wheelchair lift or automobile hand controls at the time the motor vehicle is registered.

(2) A patient purchasing a wheelchair lift or automobile hand controls directly from a vendor of adaptive medical equipment for subsequent installation shall possess a prescription for the wheelchair lift or automobile hand controls prior to the sale in compliance with subdivision (a)(2) of this section.

History. Acts 1991, No. 414, § 1; 2003, No. 1273, § 2; 2003, No. 1473, § 64; 2007, No. 140, §§ 1, 2; 2007, No. 181, §§ 23, 45; 2007, No. 860, § 5; 2009, No. 384, § 6; 2011, No. 983, § 9.

Amendments. The 2009 amendment rewrote (b)(2)(B), and inserted the text of former (b)(2)(B) as (b)(2)(C).

The 2011 amendment deleted (b)(2)(B) and redesignated former (b)(2)(C) as (b)(2)(B); and added (b)(7).

26-52-436. Certain classes of trucks or trailers.

(a) As used in this section:

(1) "Person" means a natural person who resided in this state at the time of purchasing a truck tractor or semitrailer in this state;

(2) "Semitrailer" means every vehicle with or without motive power, including a pole trailer, drawn by a truck tractor or a Class Six or Class Seven truck as defined by § 27-14-601(a)(3)(F) and (G) that is registered with the International Registration Plan to be engaged in interstate commerce and designed for carrying property; and

(3)(A) "Truck tractor" means a motor vehicle:

(i) Designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn; and

(ii) Registered as a:

(a) Class Five or Class Eight truck as defined by § 27-14-601(a)(3); or

(b) Class Six or Class Seven truck as defined by § 27-14-601(a)(3)(F) and (G) that is not registered with the International Registration Plan to be engaged in interstate commerce.

(B) "Truck tractor" does not include a Class Six or Class Seven truck as defined by § 27-14-601(a)(3)(F) and (G) that is registered with the International Registration Plan to be engaged in interstate commerce.

(b) Except as provided in subsections (d) and (e) of this section, the gross receipts or gross proceeds in excess of nine thousand one hundred fifty dollars ($9,150) derived from the sale of a new or used truck tractor in this state are exempt from the Arkansas gross receipts tax levied by this chapter.

(c) The gross receipts or gross proceeds derived from the sale of a new or used semitrailer in this state are exempt from the Arkansas gross receipts tax levied by this chapter.

(d) The gross receipts or gross proceeds derived from the sale in this state of a new or used Class Six or Class Seven truck as defined by § 27-14-601(a)(3)(F) and (G) that is registered with the International

Registration Plan to be engaged in interstate commerce are exempt from the Arkansas gross receipts tax levied by this chapter.

(e) The exemption under subsection (b) of this section does not apply to gross receipts taxes levied by any Arkansas city, town, or county.

History. Acts 2003, No. 551, § 1; 2011, No. 1058, § 3.

Amendments. The 2011 amendment inserted "or a Class Six...engaged in interstate commerce" in (a)(2); deleted "Class Six, Class Seven" following "Class Five" in (a)(3)(A)(ii)(*a*); inserted (a)(3)(A)(ii)(*b*) and (a)(3)(B); substituted "subsections (d) and (e)" for "subsection (d)" in (b); in (c), deleted "Except as provided in subsection (d) of this section" at the beginning and deleted "in excess of one thousand dollars ($1,000)" following "gross proceeds"; inserted (d) and redesignated the remaining subsection as (e); and substituted "under subsection (b) of this section" for "in this section" in present (e).

Effective Dates. Acts 2011, No. 1058, § 6: July 1, 2012.

26-52-442. Thermal imaging equipment.

The gross receipts or gross proceeds derived from the sale of thermal imaging equipment purchased by a county government for use by law enforcement aircraft are exempt from the:

(1) Gross receipts tax levied by this chapter; and

(2) Compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 2009, No. 767, § 1.

26-52-443. Exemption for Arkansas Search Dog Association, Inc.

The gross receipts or gross proceeds from the sale of tangible personal property or a service to the Arkansas Search Dog Association, are exempt from the gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 2009, No. 1176, § 1.

Effective Dates. Acts 2009, No. 1176, § 2: Effective date clause provided: "Section 1 of this act is effective on the first day of the calendar quarter following the effective date of this act."

26-52-444. Sales tax holiday.

(a) As used in this section:

(1) "Clothing" means an item of human wearing apparel suitable for general use for which the gross receipts or gross proceeds paid for the item of clothing is less than one hundred dollars ($100);

(2) "Clothing accessory or equipment" means an incidental item worn on the person or in conjunction with clothing for which the gross receipts or gross proceeds paid for the item of clothing accessory or equipment is less than fifty dollars ($50.00);

(3) "School art supply" means an item commonly used by a student in a course of study for artwork;

(4) "School instructional material" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught; and

(5) "School supply" means an item commonly used by a student in a course of study.

(b) The gross receipts or gross proceeds derived from the sale of the following items are exempt from the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., every year from 12:01 a.m. on the first Saturday in August and ending at 11:59 p.m. the following Sunday:

(1) Clothing;

(2) Clothing accessory or equipment;

(3) School art supply;

(4) School instructional material; and

(5) School supply.

(c) The Department of Finance and Administration shall promulgate rules to implement this section.

History. Acts 2011, No. 757, § 1.

26-52-445. Kegs used by wholesale manufacturer of beer.

The gross receipts or gross proceeds derived from the sale of a keg that is used to sell beer wholesale by a wholesale manufacturer of beer are exempt from the gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 2011, No. 1226, § 1; 2013, No. 1135, § 13.

Amendments. The 2013 amendment rewrote the section.

Meaning of "this act". Acts 2011, No. 1226, § 1 is codified as § 26-52-445.

26-52-446. Grain drying and storage facilities. [Effective July 1, 2014.]

(a) As used in this section, "utility" means electricity, liquefied petroleum gas, and natural gas.

(b)(1) The gross receipts or gross proceeds derived from the sale of a utility used by a grain drying and storage facility are exempt from the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(2) A utility sold for a purpose other than the purposes stated in subdivision (b)(1) of this section is subject to the full gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the full compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(c)(1) A utility subject to the exemption provided under this section shall be separately metered from a utility used for any other purpose by the taxpayer.

(2) However, the rules promulgated under subsection (e) of this section may establish additional or alternate requirements for the metering of utilities under this section.

(d) Before allowing the exemption of a utility under this section, the Director of the Department of Finance and Administration may require a seller of a utility to obtain a certificate from the taxpayer in the form prescribed by the director, certifying that the taxpayer is eligible for the exemption.

(e) The director shall promulgate rules for the proper administration of this section.

History. Acts 2013, No. 1401, § 1.
Effective Dates. Acts 2013, No. 1401, § 2: July 1, 2014. Effective date clause provided: "Section 1 of this act is effective on and after July 1, 2014."

26-52-447. Partial replacement and repair of certain machinery and equipment. [Effective July 1, 2014.]

(a) The taxes levied under §§ 26-52-301 and 26-52-302 on the gross receipts or gross proceeds from the sale of the following are subject to a refund as provided in this section:

(1) Machinery and equipment purchased to modify, replace, or repair, either in whole or in part, existing machinery or equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging articles of commerce at a manufacturing or processing plant or facility in this state; and

(2) Service relating to the initial installation, alteration, addition, cleaning, refinishing, replacement, or repair of machinery or equipment described in subdivision (a)(1) of this section.

(b) Beginning July 1, 2014, the taxes levied under §§ 26-52-301 and 26-52-302 that are subject to a refund under this section are the taxes in excess of four and seven-eighths percent (4.875%).

(c) The excise tax of one-eighth of one percent (⅛ of 1%) levied in Arkansas Constitution, Amendment 75, and the temporary excise tax of one-half percent (0.5%) levied in Arkansas Constitution, Amendment 91, are not subject to refund under this section.

(d) As used in this section:

(1) "Manufacturing" or "processing" means the same as defined under § 26-52-402(b) and includes activities described in subsection (a) of this section, both independently and collectively; and

(2) "Used directly" means the same as defined under § 26-52-402(c).

(e) All existing excise tax exemptions, including without limitation exemptions under §§ 26-52-402 and 26-53-114, remain in full force and effect and are not limited by this section.

(f) To claim the benefit of the tax refund under this section, a taxpayer shall hold a direct pay sales and use tax permit from the

Department of Finance and Administration and shall claim the tax refund under the direct pay permit.

(g) The following provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., apply to claims for a refund under this section:

(1) The time limitations that apply to claims for a refund of an overpayment of state tax; and

(2) The procedures that apply to the disallowance or proposed disallowance of claims for a refund.

History. Acts 2013, No. 1404, § 1.
Effective Dates. Acts 2013, No. 1404, § 4: July 1, 2014. Effective date clause provided: "This act is effective on and after July 1, 2014."

26-52-448. Dental appliances. [Effective July 1, 2014.]

(a) The gross receipts or gross proceeds derived from the sale of a dental appliance to or by a dentist, orthodontist, oral surgeon, maxillofacial surgeon, or endodontist are exempt from the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) As used in this section, "dental appliance" means a dental device that is made for a specific patient, including without limitation a dental implant, orthodontic appliance, retainer, crown, bridge, or denture.

History. Acts 2013, No. 1414, § 1.
Effective Dates. Acts 2013, No. 1414, § 2: July 1, 2014. Effective date clause provided: "This act is effective on and after July 1, 2014."

26-52-449. Nonprofit blood donation organizations. [Effective October 1, 2013.]

(a) The gross receipts or gross proceeds from the sale of tangible personal property or a service to a nonprofit blood donation organization are exempt from the gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) As used in this section, "nonprofit blood donation organization" means an organization described in 26 U.S.C. § 501(c)(3), as it existed on January 1, 2013, that is:

(1) Operated wholly or in part for the purpose of obtaining, collecting, separating, treating, testing, storing, processing, preparing for transfusing, furnishing, donating, or distributing human blood or parts or fractions of single blood units or products derived from single blood units; and

(2) Registered as a blood establishment with the United States Food and Drug Administration.

History. Acts 2013, No. 1419, § 1.
Effective Dates. Acts 2013, No. 1419, § 2: Oct. 1, 2013. Effective date clause provided: "Section 1 of this act is effective on the first day of the calendar quarter following the effective date of this act."

26-52-450. Utilities used for qualifying agricultural structures and qualifying aquaculture and horticulture equipment.

(a) As used in this section:

(1) "Aquaculture" means the active cultivation of domesticated fish;

(2) "Domesticated fish" means fish that are spawned, grown, managed, harvested, and marketed on an annual, semiannual, biennial, or short-term basis in waters that are confined within a pond, tank, or lake that is situated entirely on the premises of a single owner and that, except under abnormal flood conditions, are in no way connected by water or with any other:

(A) Flowing stream or body of water; or

(B) Body of water not situated on the premises of the owner;

(3)(A) "Horticulture" means the initial production and cultivation of fruits, vegetables, tree nuts, trees, shrubs, vines, and florist stock.

(B) "Horticulture" does not include the cultivation of fruits, vegetables, tree nuts, trees, shrubs, vines, and florist stock at a retail or wholesale facility from which the items are sold;

(4) "Qualifying agricultural structure" means the following:

(A) A poultry or livestock facility used for commercial production, including without limitation a broiler or turkey grow-out house, laying house, hatching unit, nursery unit, breeding house, farrowing unit, and feed-out house;

(B) A cattle and dairy facility, including without limitation a milking parlor, milk collection unit, and refrigeration unit; and

(C) A greenhouse used for commercial production;

(5) "Qualifying aquaculture or horticulture equipment" means:

(A) A cooling unit, collection unit, or irrigation equipment used in a commercial horticulture operation;

(B) Equipment used to pump and aerate a pond used in a commercial aquaculture operation; and

(C) A holding and sorting tank used in a commercial aquaculture operation; and

(6) "Utility" means the following:

(A) Electricity;

(B) Liquefied petroleum gas; and

(C) Natural gas.

(b)(1) Beginning January 1, 2014, the gross receipts or gross proceeds derived from the sale of a utility used by the following are exempt from the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.:

(A) A qualifying agricultural structure used for a commercial purpose; and

(B) Qualifying aquaculture or horticulture equipment operated for a commercial purpose.

(2) A utility sold for any purpose other than the purposes stated in subdivision (b)(1) of this section is subject to the full gross receipts tax

levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the full compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(c)(1) A utility subject to the exemption provided under this section shall be separately metered from a utility used for any other purpose by the taxpayer.

(2) However, the rules promulgated under subsection (e) of this section may establish additional or alternate requirements for the metering of utilities under this section.

(d) Before allowing the exemption of a utility under this section, the Director of the Department of Finance and Administration may require a seller of a utility to obtain a certificate from the taxpayer in the form prescribed by the director, certifying that the taxpayer is eligible for the exemption.

(e) The director shall promulgate rules for the proper administration of this section.

History. Acts 2013, No. 1441, § 1.

Subchapter 5 — Returns and Remittance of Tax

Effective Dates. Acts 2009, No. 384, § 15: Mar. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law require amendment to provide consistency with the Streamlined Sales and Use Tax Agreement, that a withdrawal from stock is subject to gross receipts tax under current law, that clarification is needed to ensure that the original legislative intent is fulfilled, and that this act is immediately necessary to prevent possible confusion among the taxpayers of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 753 § 3: effective on and after Jan. 1, 2012.

26-52-507. Florists transmitting orders.

(a) The gross receipts tax levied by this state shall be due and collected by a florist who transmits an order by telegraph, telephone, or other means of communication for flowers, floral arrangements, potted plants, or any other article common to the florist business for delivery to any other place within or without this state.

(b) The gross receipts tax collected by the florist transmitting the order by telegraph, telephone, or other means of communication shall be the only tax collected on that order regardless of whether the order originated within or without this state.

(c) The destination sourcing rules in § 26-52-521 do not apply to the florist transmitting the order by telegraph, telephone, or other means of communication.

History. Acts 2009, No. 384, § 7.

Publisher's Notes. Former § 26-52-507, concerning gross receipts tax due by florists transmitting orders, was repealed by Acts 2007, No. 181, § 25. The section was derived from Acts 1959, No. 116, § 1; A.S.A. 1947, § 84-1908.1.

26-52-508. Collection of tax by sellers or admissions collectors.

CASE NOTES

Liability for Tax.

Lender was not entitled to bad-debt refunds, under § 26-52-309, of sales taxes paid on defaulted consumer credit accounts with retailers because: (1) the retailer, not the lender, was the "taxpayer" liable for the tax; and (2) the lender was not entitled to such refunds as an assignee of the retailer, as the Gross Receipts Act did not include "assignee" in the definition of a "taxpayer." Citifinancial Retail Servs. Div. of Citicorp Trust Bank, Fsb v. Weiss, 372 Ark. 128, 271 S.W.3d 494 (2008).

26-52-510. Direct payment of tax by consumer-user — New and used motor vehicles, trailers, or semitrailers.

(a)(1) On or before the time for registration as prescribed by § 27-14-903(a), a consumer shall pay to the Director of the Department of Finance and Administration the tax levied by this chapter and all other gross receipts taxes levied by the state with respect to the sale of a new or used motor vehicle, trailer, or semitrailer required to be licensed in this state, instead of the taxes being collected by the dealer or seller.

(2) The director shall require the payment of the taxes at the time of registration before issuing a license for the new or used motor vehicle, trailer, or semitrailer.

(3)(A) The taxes apply regardless of whether the motor vehicle, trailer, or semitrailer is sold by a vehicle dealer or an individual, corporation, or partnership not licensed as a vehicle dealer.

(B) The exemption in § 26-52-401(17) for isolated sales does not apply to the sale of a motor vehicle, trailer, or semitrailer.

(4) If the consumer fails to pay the taxes when due:

(A) There is assessed a penalty equal to ten percent (10%) of the amount of taxes due; and

(B) The consumer shall pay to the director the penalty under subdivision (a)(4)(A) of this section and the taxes due before the director issues a license for the motor vehicle, trailer, or semitrailer.
(b)(1)(A) Except as provided in this section, when a used motor vehicle, trailer, or semitrailer is taken in trade as a credit or part payment on the sale of a new or used motor vehicle, trailer, or semitrailer, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used vehicle, trailer, or semitrailer sold and the credit for the used vehicle, trailer, or semitrailer taken in trade.

(B) However, if the total consideration for the sale of the new or used motor vehicle, trailer, or semitrailer is less than four thousand dollars ($4,000), no tax shall be due.

(C)(i) When a used motor vehicle, trailer, or semitrailer is sold by a consumer, rather than traded-in as a credit or part payment on the sale of a new or used motor vehicle, trailer, or semitrailer, and the consumer subsequently purchases a new or used vehicle, trailer, or semitrailer of greater value within forty-five (45) days of the sale, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used vehicle, trailer, or semitrailer purchased subsequently and the amount received from the sale of the used vehicle, trailer, or semitrailer sold in lieu of a trade-in.

(ii)*(a)* Upon registration of the new or used motor vehicle, a consumer claiming the deduction provided by subdivision (b)(1)(C)(i) of this section shall provide a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle.

(b) A copy of the bill of sale shall be deposited with the revenue office at the time of registration of the new or used motor vehicle.

(c) The deduction provided by this section shall not be allowed unless the taxpayer claiming the deduction provides a copy of a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle.

(iii) If the taxpayer claiming the deduction provided in this section fails to provide a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle, tax shall be due on the total consideration paid for the new or used vehicle, trailer, or semitrailer without any deduction for the value of the item sold.

(2)(A)(i) When a motor vehicle dealer removes a vehicle from its inventory and the vehicle is used by the dealership as a service vehicle, the dealer shall register the vehicle, obtain a certificate of title, and pay sales tax on the listed retail price of the new vehicle.

(ii)*(a)* When the motor vehicle dealer returns the service vehicle to inventory as a used vehicle and replaces it with a new vehicle for dealership use as a service vehicle, the dealer shall pay sales tax on

the difference between the listed retail price of the new service vehicle to be used by the dealership and the value of the used service vehicle being returned to inventory.

(b) The value of the used service vehicle shall be the highest listed wholesale price reflected in the most current edition of the National Automotive Dealers Association's Official Used Car Guide.

(B)(i) As used in this subsection, "service vehicle" means a motor vehicle driven exclusively by an employee of the dealership and used either to transport dealership customers or dealership parts and equipment.

(ii) "Service vehicle" does not include motor vehicles which are rented by the dealership, used as demonstration vehicles, used by dealership employees for personal use, or used to haul or pull other vehicles.

(c) All parts and accessories purchased by motor vehicle sellers for resale or used by them for the reconditioning or rebuilding of used motor vehicles intended for resale are exempt from gross receipts tax, provided that the motor vehicle seller meets the requirements of § 26-52-401(12)(A) and applicable regulations promulgated by the director.

(d) Nothing in this section shall be construed to repeal any exemption from this chapter.

(e) A credit is not allowed for sales or use taxes paid to another state with respect to the purchase of a motor vehicle, trailer, or semitrailer that was first registered by the purchaser in Arkansas.

(f)(1)(A) Any motor vehicle dealer licensed pursuant to § 27-14-601(a)(6) who has purchased a used motor vehicle upon payment of all applicable registration and title fees may register the vehicle for the sole purpose of obtaining a certificate of title to the vehicle without payment of gross receipts tax, except as provided in subdivision (f)(1)(B) of this section.

(B)(i) The sale of a motor vehicle from the original franchise dealer to any other dealer, person, corporation, or other entity other than a franchise dealer of the same make of vehicle and which sale is reflected on the statement of origin shall be subject to gross receipts tax.

(ii) The vehicle shall be considered a used motor vehicle which shall be registered and titled, and tax shall be paid at the time of registration.

(iii) The provisions of subdivision (f)(1)(A) of this section shall not apply in those instances.

(2) No license plate shall be provided with the registration, and the used vehicle titled by a dealer under this subsection may not be operated on the public highways unless there is displayed on the used vehicle a dealer's license plate issued under the provisions of § 27-14-601(a)(6)(B)(ii).

(g)(1)(A) For purposes of this section, the total consideration for a used motor vehicle shall be presumed to be the greater of the actual

sales price as provided on the bill of sale, invoice or financing agreement, or the average loan value price of the vehicle as listed in the most current edition of a publication which is generally accepted by the industry as providing an accurate valuation of used vehicles.

(B) If the published loan value exceeds the invoiced price, then the taxpayer must establish to the director's satisfaction that the price reflected on the invoice or other document is true and correct.

(C) If the director determines that the invoiced price is not the actual selling price of the vehicle, then the total consideration will be deemed to be the published loan value.

(2)(A) For purposes of this section, the total consideration for a new or used trailer or semitrailer shall be the actual sales price as provided on a bill of sale, invoice, or financing agreement.

(B) The director may require additional information to conclusively establish the true selling price of the new or used trailer or semitrailer.

History. Acts 1941, No. 386, § 3; 1945, No. 64, § 1; 1957, No. 19, §§ 1, 4; 1959, No. 260, § 1; A.S.A. 1947, §§ 84-1903, 84-3108n; Acts 1989 (3rd Ex. Sess.), No. 9, § 1; 1991, No. 3, § 6; 1993, No. 285, § 8; 1993, No. 297, § 8; 1995, No. 268, § 6; 1995, No. 390, § 1; 1995, No. 437, § 1; 1995, No. 1013, § 1; 1997, No. 1232, §§ 1, 2; 2001, No. 1047, § 1; 2001, No. 1834, § 1; 2009, No. 655, §§ 21–23; 2011, No. 753, § 1; 2011, No. 983, § 10.

Amendments. The 2009 amendment rewrote (a); deleted (e)(2) and redesignated the remaining text accordingly; substituted "new or used trailer or semitrailer" for "trailer" in (g)(2)(B); and made minor stylistic changes.

The 2011 amendment by No. 753 substituted "four thousand dollars ($4,000)" for "two thousand five hundred dollars ($2,500)" in (b)(1)(B).

The 2011 amendment by No. 983 rewrote (a)(4)(B).

Effective Dates. Acts 2011, No. 753 § 3: effective on and after Jan. 1, 2012.

26-52-511. Prepaid funeral contracts.

(a) A person who purchases a prepaid funeral contract may pay gross receipts taxes on the tangible personal property purchased in the prepaid funeral contract on the date the prepaid funeral contract is purchased in lieu of paying such taxes at the time of the person's death.

(b) The rate of the tax shall be the gross receipts tax rate in effect pursuant to this chapter at the time the prepaid funeral contract is purchased.

(c) Each prepaid funeral contract shall state the following: "ALL SALES TAXES DUE UNDER THE ARKANSAS GROSS RECEIPTS ACT OF 1941 WHICH ARE NOT PAID IN FULL AS OF THE DATE OF THIS CONTRACT ARE DUE UPON THE DEATH OF THE INDIVIDUAL FOR WHOM THIS CONTRACT IS PURCHASED.".

History. Acts 1999, No. 598, § 1; 2009, No. 655, § 24.

Amendments. The 2009 amendment substituted "Arkansas Gross Receipts Act of 1941" for "Gross Receipts Tax Act" in (c), and made minor stylistic and punctuation changes.

26-52-512. Tax payments by retailers.

(a) All retailers within the State of Arkansas registered to collect the Arkansas gross receipts tax and having average net sales of more than two hundred thousand dollars ($200,000) per month for the preceding calendar year shall make prepayment of sales tax by electronic funds transfer, as defined in § 26-19-101, according to one (1) of the following payment options:

(1)(A) The taxpayer may elect to make two (2) tax payments by electronic funds transfer for the current calendar month. Each payment shall be equal to forty percent (40%) of the tax due on the monthly average net sales on or before the twelfth and twenty-fourth of each month.

(B) The balance of actual collections for the month shall be remitted with the monthly gross receipts tax report due by the twentieth day of the following month; or

(2)(A) The taxpayer may elect to pay by electronic funds transfer an amount equal to or exceeding eighty percent (80%) of the gross receipts tax liability for the current calendar month on or before the twenty-fourth of each month.

(B) The balance of actual collections for the month shall be remitted with the monthly gross receipts tax report due by the twentieth day of the following month.

(b)(1)(A) Every taxpayer who timely remits the prepayments required by subsection (a) of this section and who timely files and pays the taxpayer's monthly gross receipts tax report shall be entitled to a discount.

(B) The discount shall be the lesser of two percent (2%) of the reported monthly gross tax, or one thousand dollars ($1,000).

(2)(A) Failure to pay tax prepayments when due shall result in the assessment of a penalty equal to five percent (5%) of the amount of each required tax prepayment.

(B) If a taxpayer elects to prepay according to subdivision (a)(2) of this section and fails to pay eighty percent (80%) of the tax liability by the twenty-fourth of the current month, no penalty shall be assessed if the taxpayer proves that more than twenty percent (20%) of the taxpayer's tax liability arose from sales occurring after the twenty-fourth of the current month but before the last day of the current month.

(3)(A) The aggregate discount available to a taxpayer who operates more than one (1) permitted business location within this state and who does not file a consolidated monthly gross receipts tax report for all locations shall not exceed one thousand dollars ($1,000) per month.

(B) In the case of a corporate taxpayer that is a parent corporation and that holds fifty percent (50%) or more of the outstanding shares of one (1) or more corporations that are subsidiaries and that are subject to the tax imposed by this chapter, the aggregate discount

available to the parent corporation and all subsidiaries shall not exceed one thousand dollars ($1,000) per month.

(c)(1) For any electronic funds transfer or report required under subsection (a) of this section, the due date of which falls on a Saturday, Sunday, or legal holiday, the electronic funds transfer or report shall be made on the next succeeding business day that is not a Saturday, Sunday, or legal holiday.

(2) If the Federal Reserve Bank is closed on a due date that prohibits a taxpayer from being able to make a payment through electronic funds transfer, the payment shall be accepted as timely if made on the next day the Federal Reserve Bank is open.

(3) A report filed in conjunction with a remittance that cannot be made due to the closure of the Federal Reserve Bank shall be accepted as timely if filed in conjunction with the payment on the next day the Federal Reserve Bank is open.

(d) As used in this section, "average net sales" means total gross proceeds or gross receipts as defined in this chapter less any deductions allowed by this chapter.

History. Acts 1987 (1st Ex. Sess.), No. 10, § 1; 1992 (2nd Ex. Sess.), No. 6, § 2; 1997, No. 635, § 1; 2003, No. 665, §§ 1, 2; 2003, No. 747, § 4; 2007, No. 827, §§ 223, 224; 2011, No. 291, § 11.

Amendments. The 2011 amendment added (c)(2) and (3).

26-52-514. Determining total consideration for sale of vehicle — Alternative method.

(a) The Director of the Department of Finance and Administration is authorized to adopt an alternative method for determining the total consideration for the sale of new or used:

(1) Manufactured homes, mobile homes, or modular homes under § 26-52-801 et seq.;

(2) Aircraft under § 26-52-505; and

(3) Motor vehicles, trailers, or semitrailers under §§ 26-52-510 and 26-53-126.

(b)(1) The alternative method adopted shall incorporate any generally accepted method of determining the value of the item being sold.

(2) If the consideration stated by the parties to the sale is less than the value determined by such generally accepted method of valuation, then for purposes of taxation it shall be presumed that the higher figure is the total consideration, unless the taxpayer provides a contract, bill of sale, or other evidence establishing that the true consideration is less than the value determined under the alternative method.

History. Acts 1991, No. 3, § 8; 2009, No. 655, § 25.

Amendments. The 2009 amendment rewrote (a)(1), which read: "House trailers or mobile homes under § 26-52-504 [repealed]."

26-52-516. Refunds for construction of employer-operated child care facilities.

(a) A business which operates, or contracts for the operation of, a child care facility for the primary purpose of providing child care services to its employees may obtain a refund of the gross receipts tax paid on the purchase of construction materials and furnishings used in the initial construction and equipping of the child care facility after the facility is licensed pursuant to the Child Care Facility Licensing Act, § 20-78-201 et seq., and is certified as having an appropriate early childhood program pursuant to § 6-45-109.

(b)(1) As used in this section, "child care facility" means a child care facility licensed under the Child Care Facility Licensing Act, § 20-78-201 et seq. To qualify as a child care facility, the child care facility shall provide an appropriate early childhood program as defined in § 6-45-103.

(2) A child care facility may be operated for the use of one (1) or more employers.

History. Acts 1995, No. 850, § 3; 2009, No. 655, § 26.

Amendments. The 2009 amendment inserted "As used in this section" in (b)(1), and made related and minor stylistic changes.

26-52-517. Exemption certificates.

(a) The sales tax liability for all sales of tangible personal property and taxable services is upon the seller unless the purchaser claims an exemption and the seller obtains identifying information of the purchaser and the reason the purchaser is claiming the exemption in the manner prescribed by the Director of the Department of Finance and Administration.

(b)(1) When tangible personal property or taxable services are purchased tax-free pursuant to subsection (a) of this section and the tangible personal property or taxable service is not resold by the purchaser, the purchaser is solely liable for reporting and remitting to the director any tax which should have been paid at the time of purchase.

(2) Use or disposition of the property other than for resale shall be deemed a withdrawal from stock for all purposes, including reporting and remittance of the tax due, and the tax shall be due from the purchaser at the time of the withdrawal from stock.

(c)(1) The director may provide sale for resale certificates to assist retailers in properly accounting for nontaxable sales of tangible personal property or taxable services.

(2) Such certificates must be completed as to the information required in order to be valid and cannot be used to establish any other exemption from sales or use tax.

(d)(1) A seller may accept a blanket exemption certificate from a purchaser with which the seller has a recurring business relationship.

(2) A seller is not required to renew blanket exemption certificates or update exemption certificate information or data elements when there is a recurring business relationship between the purchaser and seller.

(3) A recurring business relationship exists when a period of no more than twelve (12) months elapses between sales transactions.

(e) A seller that follows the exemption requirements as prescribed by the director is relieved from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption.

(f) The relief from liability provided in subsection (e) of this section does not apply to a seller that:

(1) Fraudulently fails to collect the sales tax;

(2) Solicits a purchaser to participate in the unlawful claim of an exemption; or

(3) Accepts an exemption certificate from a purchaser claiming an entity-based exemption if:

(A) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller; and

(B) The Department of Finance and Administration provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in Arkansas.

(g)(1) A seller may obtain a fully completed exemption certificate or capture the relevant data elements required by the department within ninety (90) days after the date of sale.

(2)(A) If the seller has not obtained an exemption certificate or all relevant data elements and the department makes a request for substantiation of the exemption, the seller has one hundred twenty (120) days from the date of the request to prove by other means that the transaction was not subject to sales or use tax or to obtain in good faith a fully completed exemption certificate from the purchaser.

(B) As used in this subsection, "good faith" means that the seller obtains a certificate that claims an exemption that:

(i) Was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;

(ii) Could be applicable to the item being purchased; and

(iii) Is reasonable for the purchaser's type of business.

History. Acts 1995, No. 358, § 1; 2007, No. 181, § 27; 2011, No. 291, §§ 12, 13; 2013, No. 1135, §§ 14, 15.

Amendments. The 2011 amendment rewrote (d); and added (g)(2)(B).

The 2013 amendment inserted "exemption" in (d)(2); and substituted "As used in this subsection, 'good faith'" for "'Good faith'" in the introductory language of (g)(2)(B).

26-52-521. Sourcing of sales.

(a)(1) This section applies for purposes of determining a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product or service.

(2) This section does not affect the obligation of a purchaser or lessee to remit tax on the use of the product or service to the taxing jurisdictions of that use and does not apply to the sales or use taxes levied on the retail sale excluding lease or rental, of motor vehicles, trailers, or semitrailers that require licensing.

(b) Excluding a lease or rental, the retail sale of a product or service shall be sourced as follows:

(1) If the product or service is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(2) If the product or service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's designated donee occurs, including the location indicated by instructions for delivery to the purchaser or donee known to the seller;

(3) If subdivisions (b)(1) and (2) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(4) If subdivisions (b)(1)-(3) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available if the use of this address does not constitute bad faith; or

(5) If none of the previous rules of subdivisions (b)(1)-(4) of this section apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, the location will be determined by the address from which tangible personal property was shipped or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(c) The lease or rental of tangible personal property other than property identified in subsection (d) or subsection (e) of this section shall be sourced as follows:

(1)(A) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section.

(B) Periodic payments made after the first payment are sourced to the primary property location for each period covered by the payment.

(C) The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business if use of this address does not constitute bad faith.

(D) The property location shall not be altered by intermittent use at different locations such as use of business property that accompanies employees on business trips and service calls;

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section; and

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for lease.

(d) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment as defined in subsection (e) of this section shall be sourced as follows:

(1)(A) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location.

(B) The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business if use of this address does not constitute bad faith.

(C) This location shall not be altered by intermittent use at different locations;

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section; and

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for lease.

(e)(1) Including a lease or rental, the retail sale of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section, notwithstanding the exclusion of a lease or rental in subsection (b) of this section.

(2) As used in this section, "transportation equipment" means any of the following:

(A) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(B) Trucks and truck tractors with a Gross Vehicle Weight Rating of ten thousand one pounds (10,001 lbs.) or greater, trailers, semitrailers, or passenger buses that are:

(i) Registered through the International Registration Plan; and

(ii) Operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(C) Aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; or

(D) Containers designed for use on and component parts attached or secured on the items under subdivision (e)(1) of this section and this subdivision (e)(2).

(f) As used in subsection (b) of this section:

(1) "Receive" and "receipt" mean:

(A) Taking possession of tangible personal property; or

(B) Making first use of services; and

(2) "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(g) When a motor vehicle, trailer, or semitrailer that requires licensing is sold to a person who resides in Arkansas, the sale is sourced to the residence of the purchaser.

(h) This section shall apply to all state and local taxes administered by the Department of Finance and Administration.

(i) The destination sourcing rules in this section do not apply to florists.

History. Acts 2003, No. 1273, § 11; 2007, No. 860, § 1; 2009, No. 384, § 8.

Amendments. The 2009 amendment rewrote (i).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Sales, Use, and Utility Taxes on Retail Transactions of Internet Sellers and Internet Access Providers. 30 A.L.R.6th 341.

26-52-522. Direct mail sourcing.

(a) As used in this section:

(1) "Advertising and promotional direct mail" means direct mail in which the primary purpose is to attract attention to a product, person, business, or organization or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization;

(2) "Direct mail form" means:

(A) A Streamlined Sales and Use Tax Agreement certificate of exemption claiming direct mail, as in effect on January 1, 2011; or

(B) A written statement approved, authorized, or accepted by the state;

(3)(A) "Jurisdictional information" means information sufficient for the seller to source the sale of taxable printing services resulting in advertising and promotional direct mail to the state and local jurisdictions in which the printed materials are delivered or distributed to recipients.

(B) Jurisdictional information must be in a form in which such information can be retained and retrieved by the seller for the purpose of sales and use tax reporting.

(C) Access to a database that contains address information or a mailing list provided by the purchaser or a third party that does not allow the seller to retain and retrieve the jurisdictional information identifying jurisdictions where the advertising and promotional direct mail was delivered does not constitute receiving information showing the jurisdictions to which the advertising and promotional direct mail is delivered;

(4)(A) "Other direct mail" means any direct mail that is not advertising and promotional direct mail regardless of whether advertising and promotional direct mail is included in the same mailing and includes without limitation:

(i) Transactional direct mail that contains personal information specific to the addressee, including without limitation invoices, bills, statements of account, and payroll advices;

(ii) Any legally required mailings, including without limitation privacy notices, tax reports, and stockholder reports; and

(iii) Other non-promotional direct mail delivered to existing or former shareholders, customers, employees, or agents, including without limitation newsletters and informational pieces.

(B) "Other direct mail" does not include the development of billing information or the provision of any data processing service that is more than incidental; and

(5) "Product" means tangible personal property, a product transferred electronically, or a service.

(b) The sale of a taxable printing service resulting in the production and distribution of advertising and promotional direct mail or other direct mail shall be sourced in accordance with this section.

(c)(1) The seller shall source the sale of taxable printing service resulting in the production and distribution of advertising and promotional direct mail according to § 26-52-521(b)(5), unless the purchaser provides the seller with a direct pay permit, direct pay form, exemption certificate, or jurisdictional information.

(2) If the purchaser provides jurisdictional information to the seller, then the seller shall source the sale of the taxable printing service to the jurisdictions to which the advertising and promotional direct mail is to be delivered.

(d) The seller shall source the sale of taxable printing services resulting in the production and distribution of other direct mail according to § 26-52-521(b)(3), unless the purchaser provides the seller with a direct pay permit, direct pay form, or exemption certificate.

(e) When both advertising and promotional direct mail and other direct mail are combined in a single mailing, the sale is sourced as other direct mail.

(f) If a bundled transaction includes advertising and promotional direct mail, this section applies only if the primary purpose of the transaction is the sale of products or services that meet the definition of advertising and promotional direct mail.

(g)(1) In the absence of bad faith, the seller is relieved of any further obligation to collect any additional sales or use tax on the sale of advertising and promotional direct mail where the seller has sourced the sale according to the jurisdictional information provided by the purchaser.

(2) In the absence of bad faith, the seller is relieved of all obligations to collect, pay, or remit sales or use tax if the purchaser provides the seller with a direct pay permit, direct pay form, or exemption certificate.

(h)(1) If the purchaser provides the seller with a direct pay permit, direct pay form, or exemption certificate, then the purchaser shall source the sale to the jurisdictions to which the advertising and promotional direct mail or other direct mail is to be delivered to the recipients and shall report and pay any applicable sales or use tax due.

(2) Purchasers may use a reasonable summary or allocation of the distribution to the jurisdictions to which the advertising and promotional direct mail or other direct mail is delivered for the purposes of self-assessing and directly paying sales or use tax.

(3) This section does not limit any purchaser's:

(A) Obligation for sales or use tax to any state to which the direct mail is delivered;

(B) Right under local, state, federal, or constitutional law to a credit for sales or use taxes legally due and paid to other jurisdictions; or

(C) Right to a refund of sales or use taxes overpaid to any jurisdiction.

History. Acts 2003, No. 1273, § 11; 2011, No. 291, § 14.

Amendments. The 2011 amendment rewrote the section.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Sales, Use, and Utility Taxes on Retail Transactions of Internet Sellers and Internet Access Providers. 30 A.L.R.6th 341.

26-52-523. Credit or rebate on local sales and use tax.

(a) As used in this section:

(1) "Qualifying purchase" means a purchase of tangible personal property or a taxable service:

(A) For which the purchaser may take a business expense deduction pursuant to 26 U.S.C. § 162, as in effect on January 1, 2007;

(B) For which the purchaser may take a depreciation deduction pursuant to 26 U.S.C. § 167, as in effect on January 1, 2007;

(C) By an exempt organization under 26 U.S.C. § 501, as in effect on January 1, 2007, if the purchase would be subject to a business expense deduction or depreciation deduction if the purchaser were not an exempt organization under 26 U.S.C. § 501, as in effect on January 1, 2007; or

(D) By a state, or any county, city, municipality, school district, state-supported college or university, or any other political subdivision of a state, if the purchase would be subject to a business expense deduction or depreciation deduction if the purchaser were not one (1) of the entities enumerated in this subdivision (a)(1)(D);

(2) "Single transaction" means any sale of tangible personal property or a taxable service reflected on a single invoice, receipt, or statement for which an aggregate sales or use tax amount has been reported and remitted to the state for a single local taxing jurisdiction; and

(3) "Travel trailer" means a trailer that:

(A) Provides temporary living quarters for travel, recreation, or camping;

(B) Includes a chassis having wheels and a trailer hitch or fifth wheel for towing; and

(C) Is required to be licensed for highway use under Arkansas law.

(b)(1) A purchaser that pays any municipal sales or use tax in excess of the tax due on the first two thousand five hundred dollars ($2,500) of gross receipts or gross proceeds from the purchase of a travel trailer or from a qualifying purchase of tangible personal property or a taxable service in a single transaction is entitled to a credit or rebate of the excess amount of municipal sales or use tax paid on each single transaction.

(2) A purchaser that pays any county sales or use tax in excess of the tax due on the first two thousand five hundred dollars ($2,500) of gross receipts or gross proceeds from the purchase of a travel trailer or from a qualifying purchase of tangible personal property or a taxable service in a single transaction is entitled to a credit or rebate of the excess amount of county sales or use tax paid on each single transaction.

(c)(1) A purchaser that is required by § 26-52-501, § 26-52-509, or § 26-53-125 to file a sales or use tax return may file a claim for a credit or rebate under this section with the Director of the Department of Finance and Administration in connection with the sales or use tax return and offset the amount of credit or rebate claimed against any municipal or county sales or use tax due to be remitted with the return.

(2) A purchaser that qualifies for a credit or rebate under this section and is not required to file a sales or use tax return as provided in subdivision (c)(1) of this section may file a claim for a credit or rebate under this section with the director.

(3) If a rebate would be due under this section as a result of the purchase of a travel trailer and if the gross receipts or compensating use tax on the travel trailer is collected directly from the purchaser by the Department of Finance and Administration under § 26-52-510 or § 26-53-126, then the department shall collect only the amount of tax due less the amount to which the purchaser would be entitled under the rebate provisions of this section.

(d) No credit or rebate under this section shall be paid for any claim filed after six (6) months from the date of the qualifying purchase or after six (6) months from the date of payment, if later.

(e) A claim for a credit or rebate under this section shall be filed with the local taxing jurisdiction if, at the time the claim is filed, the local sales or use tax that is the subject of the claim has been out of existence for more than sixty (60) days.

(f) No interest shall accrue or be paid on an amount subject to a claim for a credit or rebate under this section.

(g) The director may promulgate rules to administer this section, including without limitation providing an administratively feasible method for filing a claim for a credit or rebate and any necessary forms.

(h) This section does not apply to a local sales tax levied in accordance with § 26-52-303 or § 26-75-502.

(i) Except as provided in subsection (h) of this section, this section applies to any local sales or use tax collected by the director pursuant to any state tax law authorizing a county or municipality to levy a sales or use tax.

History. Acts 2007, No. 179, § 1; 2009, No. 941, § 1.

Amendments. The 2009 amendment inserted (a)(3) and made related changes; inserted "the purchase of a travel trailer or" in (b)(1) and (b)(2); and inserted (c)(3).

Effective Dates. Acts 2009, No. 941, § 2, provided: "Section 1 of this act is effective on the first day of the calendar quarter following the effective date of this act."

Subchapter 6 — Equalization of Taxes For Border Cities and Towns

SECTION.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-52-605. Election proceedings.

(a) The governing body of an Arkansas border city or town, as described in § 26-52-602, by ordinance, may call a special election, or, upon petition of not less than ten percent (10%) of the qualified electors of the Arkansas border city or town, as determined by the number of votes cast in the Arkansas border city or town for all candidates for election to the Office of Governor of Arkansas in the immediately preceding general election, filed with the city clerk of the city or town petitioning that a special election be called, a special election shall be called in accordance with § 7-11-201 et seq. in the city or town on the question of the imposition of an additional state tax of one percent (1%) to be administered and collected as a local sales tax upon the gross receipts or gross proceeds derived from taxable sales within the border city or town under the provisions of this chapter, and the proceeds derived therefrom shall benefit the State of Arkansas in lieu of the state

income tax law applying to the net taxable income derived by individuals who are residents of the border city or town.

(b) The special election shall be called not later than one hundred twenty (120) days following the adoption of the ordinance by the governing body of the city or town, or the filing of a petition requesting the special election.

(c) Notice of the special election shall be given by publication in some newspaper of general circulation within the Arkansas border city or town on two (2) occasions not more than thirty (30) days and not less than ten (10) days prior to the date of the special election.

(d) The special election shall be held by the county board of election commissioners, and the special election judges and clerks shall be selected and the special election shall be conducted and the results shall be tabulated and certified in the manner now provided by law for the holding of elections in this state.

(e) On the ballot shall be printed the following issue:

☐ FOR the levy of an additional one percent (1%) state gross receipts tax in the City of ....., ...County, Arkansas, in lieu of paying state income taxes by individuals who are residents of said city (town).

☐ AGAINST the levy of an additional one percent (1%) state gross receipts tax in the City of ....., ...County, Arkansas, in lieu of paying state income taxes by individuals who are residents of said city (town).

(f) The voter shall cast the vote of his or her choice by placing an "X" opposite the issue of his or her choice.

History. Acts 1977, No. 48, § 3; 1977, No. 177, § 1; A.S.A. 1947, § 84-1947; Acts 2005, No. 2145, § 66; 2007, No. 181, § 29; 2007, No. 1049, § 88; 2009, No. 1480, § 107.

Amendments. The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a).

Subchapter 8 — Custom Manufactured Homes

SECTION.

Effective Dates. Acts 2009, No. 384, § 15: Mar. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law require amendment to provide consistency with the Streamlined Sales and Use Tax Agreement, that a withdrawal from stock is subject to gross receipts tax under current law, that clarification is needed to ensure that the original legislative intent is fulfilled, and that this act is immediately necessary to prevent possible confusion among the taxpayers of Arkansas.

Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-52-801. Definitions.

As used in this subchapter:

(1) "Acquisition price" means the purchase price of the new manufactured home or modular home to be paid by the purchaser as set forth on the actual invoice or bill of sale, excluding transportation and delivery fees, installation fees, and other items or services that are to be included as part of the final sale of the new manufactured home or modular home by the retailer before the consideration of a trade-in allowance or down payment paid in cash or otherwise;

(2) "Manufactured home" means a factory-built structure produced in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., and designed to be used as a dwelling unit;

(3) "Mobile home" means a structure built in a factory prior to the enactment of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., and designed to be used as a dwelling unit; and

(4) "Modular home" means a factory-built structure produced in accordance to state or local construction codes and standards and designed to be used as a dwelling unit.

History. Acts 1985, No. 1068, § 1; A.S.A. 1947, § 84-1936.1; Acts 2003, No. 365, § 1; 2005, No. 2254, § 1; 2009, No. 384, § 9.

Amendments. The 2009 amendment substituted "Acquisition price" for "Sales price" in (4).

26-52-802. Sale of manufactured, modular, or mobile homes.

(a) Whether from an established business or by a licensed retailer, every person selling manufactured homes or modular homes in this state shall obtain a permit and report and remit to the Director of the Department of Finance and Administration as provided in this chapter, together with:

(1) Copies of invoices, sales, tickets, or bills of sale reflecting the dates of all sales of such new manufactured homes or modular homes;

(2) The purchaser's name and address;

(3) The make, year, model, serial number, and acquisition price of each manufactured home or modular home; and

(4) If applicable, the amount of tax collected from the purchaser.

(b) Upon the initial sale of a new manufactured home or modular home, the tax levied by this chapter shall be collected on sixty-two

percent (62%) of the acquisition price of the new manufactured home or modular home.

(c) No tax shall be due on the sale of a mobile home or on a subsequent sale of a manufactured home or modular home, including any tax levied by this chapter or any other gross receipts tax levied by the state.

History. Acts 1985, No. 1068, § 2; A.S.A. 1947, § 84-1936.2; Acts 2003, No. 365, § 1; 2005, No. 2254, § 1; 2009, No. 384, § 10.

Amendments. The 2009 amendment substituted "acquisition" for "sales" in (a)(3) and (b).

Subchapter 9 — Steel Mill Tax Incentives

SECTION.

26-52-902. Certification required.

(a) To claim the benefits of this subchapter, a taxpayer must obtain a certification from the Director of the Arkansas Economic Development Commission certifying to the Revenue Division of the Department of Finance and Administration that the taxpayer:

(1) Operates a steel mill in Arkansas which began production after February 16, 1987; and

(2) Has invested, after February 16, 1987, in excess of one hundred twenty million dollars ($120,000,000) in the steel mill, which investment expenditure is for one (1) of the following:

(A) Property purchased for use in the construction of a building or buildings or any addition or improvement thereon to house the steel mill;

(B)(i) Machinery and equipment to be located in or in connection with the steel mill.

(ii) Motor vehicles of a type subject to registration shall not be considered as machinery and equipment; or

(C) Project planning costs or construction labor costs, including on-site direct labor and supervision, whether employed by a contractor or the project owner; architectural fees or engineering fees, or both; right-of-way purchases; utility extensions; site preparation; parking lots; disposal or containment systems; water and sewer treatment systems; rail spurs; streets and roads; purchase of mineral rights; land; buildings; building renovation; production, processing, and testing equipment; freight charges; building demolition; material handling equipment; drainage systems; water tanks and reservoirs; storage facilities; equipment rental; contractor's cost plus fees; builders risk insurance; original spare parts; job administrative expenses; office furnishings and equipment; rolling stock; capitalized start-up costs as recognized by generally accepted accounting principles; and other costs related to the construction.

(b) As used in subdivision (a)(2)(C) of this section, "production, processing, and testing equipment" includes machinery and equipment essential for the receiving, storing, processing, and testing of raw materials and the production, storage, testing, and shipping of finished products, including facilities for the production of steam, electricity, chemicals, and other materials that are essential to the manufacturing process, but which are consumed in the manufacturing process and do not become essential components of the finished product.

(c) To claim the benefits of § 26-52-903, a taxpayer must be certified before July 1, 1989, pursuant to subsection (a) of this section or obtain a certification before July 1, 1989, from the Director of the Arkansas Economic Development Commission certifying to the division that the taxpayer meets the definition of "qualified manufacturer of steel" contained in § 26-52-901.

History. Acts 1987, No. 48, § 1; 1987, No. 575, § 1; 1993, No. 403, § 24; 1997, No. 540, §§ 60, 91; 2013, No. 1135, § 16.

Amendments. The 2013 amendment inserted "before July 1, 1989" twice in (c).

26-52-914. Exemption of sales of natural gas and electricity.

(a) Sales of natural gas and electricity to taxpayers qualified under § 26-52-912(1) or § 26-52-912(2) for use in connection with the steel mill shall be exempt from:

(1) The Arkansas gross receipts tax levied by this chapter;

(2) The Arkansas compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.; and

(3) Any other state or local tax administered under this chapter or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) [Repealed.]

History. Acts 1991, No. 136, § 4; 1991, No. 137, § 4; 2009, No. 655, § 27.

Amendments. The 2009 amendment deleted (b).

CHAPTER 53

COMPENSATING OR USE TAXES

SUBCHAPTER.

Subchapter 1 — Arkansas Compensating Tax Act of 1949

SECTION.

Effective Dates. Acts 2009, No. 384, § 15: Mar. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law require amendment to provide consistency with the Streamlined Sales and Use Tax Agreement, that a withdrawal from stock is subject to gross receipts tax under current law, that clarification is needed to ensure that the original legislative intent is fulfilled, and that this act is immediately necessary to prevent possible confusion among the taxpayers of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 436, § 3: July 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that unemployment is rising in Arkansas, that the rise in unemployment has resulted in an increase in the number of Arkansans unable to afford basic necessities; and that in order to aid the people of Arkansas, the sales and use tax rate on food and food ingredients should be reduced. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009."

Acts 2009, No. 691, § 3: July 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly that manufacturers in this state have suffered losses due to sharp increases in energy costs; that these manufacturers are unable to set the price for the products they produce and are particularly vulnerable to price volatility; that the current sales and use tax on utilities consumed by these manufacturers located within this state creates a competitive disadvantage; that this act is intended to address that problem by providing a reduced tax rate on utilities consumed by manufacturers located in this state; and that this act is necessary to prevent the loss of manufacturing jobs. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health, and safety shall become effective on July 1, 2009."

Acts 2009, No. 1208, § 3: Apr. 7, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that differences of opinion have developed between the Department of Finance and Administration and Arkansas manufacturers concerning the meaning of important sections of the manufacturing machinery and equipment sales and use tax exemption, including particularly the exemption for the pur-

chase and installation of machinery and equipment to modernize and improve the efficiency of existing machinery and equipment, expand production or create new jobs that may not require the replacement of machines in their entirety, as well as the sales and use tax exemption for dies and molds used directly in manufacturing; that it is critical to encourage manufacturers to modernize and retool their plants as economically as possible in order to remain competitive and preserve Arkansas jobs; and that clarifications to confirm the intent and purpose of the manufacturing machinery and equipment sales and use tax exemption is appropriate. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 753, § 3: effective on and after Jan. 1, 2012.

Acts 2011, No. 754, § 4: July 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the cost of manufacturing continues to climb; that the Arkansas unemployment rate is extremely high; that the economy has dramatically affected manufacturers and resulted in layoffs; that decreasing the sales and use tax on natural gas and electricity used by manufacturers would provide manufacturers with a way to increase the number of employees and that this, in turn, would increase production and provide lucrative employment for Arkansans. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2011."

Acts 2011, No. 755, § 3: July 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that unemployment is rising in the state; that the rise in unemployment has resulted in an increase in the number of residents unable to afford basic necessities; and that in order to aid the people of the state, the sales and use tax rate on food and food ingredients should be reduced. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2011."

Acts 2011, No. 1058, § 6: July 1, 2012.

Acts 2011, No. 1142, § 2: July 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that large businesses that collect and remit compensating use tax are not subject to the same requirements to prepay state use tax in the same manner that large Arkansas businesses are required to prepay state sales tax; and that prepayment should be required for those businesses whose sales for purposes of use tax exceed $200,000 per month in the same manner that prepayment is required of businesses that collect and remit sales tax. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2011."

Acts 2013, No. 233, § 3: Oct. 1, 2013. Emergency clause provided: "Sections 1 and 2 of this act are effective on the first day of the calendar quarter following the effective date of this act."

Acts 2013, No. 1398, § 3: July 1, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the unemployment level in Arkansas is unacceptable; that this unemployment level results in an increase in the number of Arkansans unable to afford basic necessities; and that this act is necessary because the state sales and use tax on food and food ingredients should be eliminated as soon as it is economically feasible to do so in order to aid Arkansans. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013."

Acts 2013, No. 1404, § 4: July 1, 2014. Effective date clause provided: "This act is effective on and after July 1, 2014."

Acts 2013, No. 1411, § 7: July 1, 2014. Effective date clause provided: "This act is effective on and after July 1, 2014."

Acts 2013, No. 1450, § 3: July 1, 2013. Emergency clause provided: "It is found and determined by the General Assembly

of the State of Arkansas that the unemployment level in Arkansas is unacceptable; that this unemployment level results in an increase in the number of Arkansans unable to afford basic necessities; and that this act is necessary because the state sales and use tax on food and food ingredients should be eliminated as soon as it is economically feasible to do so in order to aid Arkansans. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013."

26-53-102. Definitions.

As used in this subchapter:

(1) "Alcoholic beverage" means a beverage that is suitable for human consumption and contains five-tenths of one percent (0.5%) or more of alcohol by volume;

(2)(A) "Bundled transaction" means a retail sale of two (2) or more products, except real property and services to real property, in which:

(i) The products are otherwise distinct and identifiable; and

(ii) The products are sold for one (1) non-itemized price.

(B) "Bundled transaction" does not include the sale of any product in which the sales price varies or is negotiable based on the selection by the purchaser of the products included in the transaction.

(C) The Department of Finance and Administration shall promulgate rules to implement this subdivision (2);

(3) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subdivision (3)(A) and is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(B) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36, as in effect on January 1, 2007;

(4) "Director" means the Director of the Department of Finance and Administration;

(5)(A) "Food" and "food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(B) "Food" and "food ingredients" do not include an alcoholic beverage, tobacco, or a dietary supplement;

(6) "In this state" or "in the state" or "within this state" means within the exterior limits of the State of Arkansas and includes all territory within those limits owned by or ceded to the United States of America;

(7) "Motor vehicle" means a vehicle that is self-propelled and is required to be registered for use on the highway;

(8) "Person" means any individual, partnership, limited liability company, limited liability partnership, corporation, estate, trust, fiduciary, or any other legal entity;

(9) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(C)(i) Food sold with an eating utensil provided by the seller, including a plate, knife, fork, spoon, glass, cup, napkin, or straw.

(ii) As used in subdivision (9)(C)(i) of this section, "plate" does not include a container or packaging used to transport the food;

(10)(A) "Purchase" means the sale of tangible personal property or taxable services by a vendor to a person for the purpose of storage, use, distribution, or consumption in this state.

(B)(i) "Purchase" also includes any withdrawal of tangible personal property from a stock or reserve maintained outside of the state by any person and subsequently brought into this state and thereafter stored, consumed, distributed, or used by that person or by any other person.

(ii) In such an event, the tax shall be computed on the value of the tangible personal property at the time it is brought into this state.

(C) No tax shall be computed to the extent that a withdrawal consists of carbonaceous materials such as petroleum coke or carbon anodes that are to be directly used or consumed in the electrolytic reduction process of producing tangible personal property for ultimate sale at retail;

(11) "Purchaser" means a person to whom a sale of tangible personal property is made or to whom a taxable service is furnished;

(12)(A) "Sale" means any transfer, barter, or exchange of the title or ownership of tangible personal property or taxable services or the right to use, store, distribute, or consume the tangible personal property or taxable services for a consideration paid or to be paid in installments or otherwise and includes any transaction whether called leases, rentals, bailments, loans, conditional sales, or otherwise, notwithstanding that the title or possession of the property, or both, is retained for security.

(B) For the purpose of this subchapter, the sale of tangible personal property or taxable services shall be sourced according to §§ 26-52-521, 26-52-522, and 26-52-523;

(13)(A) "Sales price" or "purchase price" means the total amount of consideration, including cash, credit, property, and services, for

which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) A charge by the seller for any service necessary to complete the sale, other than a delivery or installation charge;

(iv) Delivery charge;

(v)*(a)* Installation charge.

(b) However, installation charges will not be included in the "sales price" if they are not a specifically taxable service under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or this subchapter and the installation charges have been separately stated on the invoice, billing, or similar document given to the purchaser; or

(vi) Credit for any trade-in.

(B) "Sales price" or "purchase price" shall not include:

(i) A discount, including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iii) Any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(14) "Seller" means a person making a sale, lease, or rental of tangible personal property or services;

(15) "Storage" means any keeping or retention in this state of tangible personal property or taxable services purchased from a vendor for any purpose except sale or subsequent use solely outside this state;

(16)(A) "Tangible personal property" means personal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses.

(B) "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;

(17) "Taxable service" means a service that is taxable under this subchapter or the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.;

(18) "Taxpayer" means any person remitting the tax or who should remit the tax or should have remitted the tax levied by this subchapter;

(19) "Tobacco" means a cigarette, cigar, chewing or pipe tobacco, or any other item that contains tobacco;

(20)(A) "Use", with respect to tangible personal property, means the exercise of any right or power over tangible personal property incident to the ownership or control of that tangible personal prop-

erty except that it shall not include the sale of that tangible personal property in the regular course of business.

(B) With respect to a taxable service, "use" means the privilege of using the service, enjoyment of the service, or the first act within this state by which the purchaser takes or assumes dominion or control over the service or the article of tangible personal property upon which the service was performed; and

(21)(A)(i) "Vendor" means every person engaged in making sales of tangible personal property or taxable services by mail order, by advertising, or by agent, by peddling tangible personal property or taxable services, by soliciting, or by taking orders for such sales for storage, use, distribution, or consumption in this state.

(ii) "Vendor" includes all salespersons, solicitors, hawkers, representatives, consignees, peddlers, or canvassers as agents of the dealers, distributors, consignors, supervisors, principals, or employers under whom they operate or from whom they obtain the tangible personal property or taxable services sold by them.

(B) Regardless of whether a person is making sales on his or her own behalf or on behalf of dealers, distributors, consignors, supervisors, principals, or employers, the person must be regarded as a vendor, and the dealers, distributors, consignors, supervisors, principals, or employers must be regarded as vendors for purposes of this subchapter.

History. Acts 1949, No. 487, § 4; 1961, No. 43, §§ 1, 2; 1983, No. 829, § 1; 1985, No. 999, § 1; A.S.A. 1947, §§ 84-3104, 84-3104n; Acts 1995, No. 1160, § 22; 2003, No. 1273, § 12; 2007, No. 181, § 31; 2009, No. 384, §§ 11, 12; 2009, No. 655, § 28.

Amendments. The 2009 amendment by No. 384 deleted former (12)(A)(vi), redesignated the subsequent subdivision accordingly, and made related changes; and added present (7).

The 2009 amendment by No. 655 deleted former (7)(B), redesignated the remaining subdivision accordingly, deleted "joint venture" following "limited liability partnership," and made a related change.

26-53-106. Imposition and rate of tax generally — Presumptions.

(a) There is levied and there shall be collected from every person in this state a tax or excise for the privilege of storing, using, distributing, or consuming within this state any article of tangible personal property or taxable service purchased for storage, use, distribution, or consumption in this state at the rate of three percent (3%) of the sales price of the tangible personal property or taxable service except for food and food ingredients that are taxed under § 26-53-145.

(b) This tax will not apply with respect to the storage, use, distribution, or consumption of any article of tangible personal property purchased, produced, or manufactured outside this state until the transportation of the article of tangible personal property has finally come to rest within this state or until the article of tangible personal property has become commingled with the general mass of property of this state.

(c) This tax applies to use, storage, distribution, or consumption of every article of tangible personal property or taxable service except as provided in this subchapter irrespective of whether the article of tangible personal property or similar articles of tangible personal property or the taxable service is manufactured within the State of Arkansas or is available for purchase within the State of Arkansas and irrespective of any other condition.

(d)(1)(A) For the purpose of the proper administration of this subchapter and to prevent evasion of the tax and the duty to collect the tax imposed in this section, it shall be presumed that tangible personal property or taxable services sold by any vendor for delivery in this state or transportation to this state are sold for storage, use, distribution, or consumption in this state unless the vendor selling the tangible personal property or taxable service has taken from the purchaser a resale certificate signed by and bearing the name, address, and sales tax permit number of the purchaser certifying that the property or taxable service was purchased for resale, except that sales made electronically will not require the purchaser's signature.

(B) The use by the purchaser of a resale certificate and any resulting liability for, or exemption from, use tax in a transaction involving a resale certificate shall be governed in all respects by the terms of § 26-52-517.

(2) It is further presumed that tangible personal property or taxable services shipped, mailed, expressed, transported, or brought to this state by the purchaser were purchased from a vendor for storage, use, distribution, or consumption in this state.

History. Acts 1949, No. 487, §§ 5, 10; 1957, No. 19, § 2; 1959, No. 260, § 2; 1975 (Extended Sess., 1976), No. 1237, § 1; A.S.A. 1947, §§ 84-3105, 84-3110; reen. Acts 1987, No. 772, § 1; Acts 1989, No. 817, § 1; 1995, No. 358, § 2; 2003, No. 1273, §§ 13-16; 2007, No. 110, § 5; 2009, No. 655, §§ 29, 30.

Amendments. The 2009 amendment inserted "tangible personal" following "sales price of the" and "or taxable service" in (a); inserted "or the taxable service" in (c); and made minor stylistic changes.

CASE NOTES

Subject to Tax.

Natural gas "came to rest" in Arkansas within the context of subsection (b) of this section, the use tax statute, and was therefore subject to the tax at the point that it left interstate pipelines, was metered, and entered a taxpayer's plant's internal gas lines, although the gas was used immediately and never stored. Alcoa World Alumina, L.L.C. v. Weiss, 2010 Ark. 94, 377 S.W.3d 164 (2010), rehearing denied, Alcoa World Alumina, LLC v. Weiss, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 195 (Apr. 8, 2010).

26-53-108. Imposition and rate of tax on certain personal property.

(a) For the following public carriers, a state compensating tax of three percent (3%) of the gross purchase price is levied on the tangible personal property of:

(1) Motor carriers, consisting of tractors, trailers, semitrailers, trucks, buses, and other rolling stock, including replacement tires, used directly in the transportation of persons or property in intrastate or interstate common carrier transportation;

(2) Railroads, except fuel consumed in the operation of railroad rolling stock;

(3) Pipelines, consisting of transmission lines and pumping or pressure control equipment used directly in or connected to the primary pipeline facility engaged in intrastate or interstate common carrier transportation of property; and

(4) Airlines, consisting of airplanes and navigation instruments used directly in or becoming a part of flight aircraft engaged in transportation of persons or property in regular scheduled intrastate or interstate common carrier transportation.

(b) For public telephone and telegraph companies, a state compensating tax of three percent (3%) of the gross purchase price is levied on tangible personal property consisting of exchange equipment, lines, boards, and all accessory devices used directly in and connected to the primary facility engaged in transmission of messages.

(c) For the following public utilities, a state compensating tax of three percent (3%) of the gross purchase price is levied on the tangible personal property of:

(1) Gas companies, consisting of transmission and distribution pipelines and pumping or pressure control equipment used in connection with transmission and distribution pipelines that are used directly in the primary pipeline facility for the purpose of transporting and delivering natural gas;

(2) Water companies, consisting of transmission and distribution lines, pumping machinery and controls used in connection with transmission and distribution lines, and cleaning or treating equipment of a primary water distribution system; and

(3) Public electric power companies, consisting of all machinery and equipment, including reactor cores, related accessory devices used in the generation and production of electric power and energy, and transmission facilities consisting of the lines, including poles, towers, and other supporting structures, transmitting electric power and energy with substations located on and attached to the lines.

History. Acts 1971, No. 222, §§ 1, 2; A.S.A. 1947, §§ 84-3105.1, 84-3105.2; Acts 2009, No. 655, § 31.

Amendments. The 2009 amendment rewrote the section.

26-53-109. Tax on use, storage, or distribution of computer software.

(a) The excise tax levied by this subchapter and by any act supplemental to this subchapter is levied on the privilege of storing, using, distributing, or consuming within this state any of the following:

(1)(A) Computer software, including prewritten computer software, which shall be treated as a use, storage, distribution, or consumption of tangible personal property for purposes of tax.

(B) As used in this section:

(i) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

(ii)*(a)* "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(b) "Computer software" does not include software that is delivered electronically or by load and leave;

(iii) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

(iv) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(v) "Load and leave" means delivery to the purchaser by use of a tangible storage media in which the tangible storage media is not physically transferred to the purchaser; and

(vi) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser; and

(2) Service of repairing or maintaining computer equipment or hardware in any form.

(b) [Repealed.]

History. Acts 1983 (1st Ex. Sess.), No. 88, §§ 2, 3; A.S.A. 1947, §§ 84-3105.3, 84-3105.3n; Acts 1989, No. 817, § 3; 2007, No. 181, § 32; 2009, No. 384, § 13; 2009, No. 655, § 32.

Amendments. The 2009 amendment by No. 384 inserted "not" in (a)(1)(B)(vi).

The 2009 amendment by No. 655 deleted (b).

26-53-114. Exemption for certain machinery and equipment.

(a) There is specifically exempted from the taxes levied in this subchapter:

(1)(A) Only to the extent that the machinery and equipment is purchased and used for the purposes set forth in this subdivision (a)(1), machinery and equipment used directly in the producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas, including facilities and

plants for manufacturing feed, processing of poultry and eggs and livestock, and the hatching of poultry.

(B) The machinery and equipment will be exempt under this section if it is purchased and used to create new manufacturing or processing plants or facilities within this state or to expand existing manufacturing or processing plants or facilities within this state;

(2)(A) Machinery purchased to replace existing machinery in its entirety and used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in this state will be exempt under this section.

(B)(i) As used in subdivision (a)(2)(A) of this section, "machinery purchased to replace existing machinery" means that substantially all of the machinery and equipment required to perform an essential function is physically replaced with new machinery.

(ii) As used in subdivision (a)(2)(B)(i) of this section, "substantially" is intended to exclude routine repairs and maintenance and partial replacements that do not improve efficiency or extend the useful life of the entire machine, but it is not intended to mean that foundations and minor components which can be economically adapted, rebuilt, or refurbished must be completely replaced when replacement would be more expensive or impracticable than adapting, rebuilding, or refurbishing the old foundation and minor components; and

(3)(A) Machinery and equipment required by state or federal law or regulations to be installed and utilized by manufacturing or processing plants or facilities, cities, or towns in this state to prevent or reduce air or water pollution or contamination that might otherwise result from the operation of the plant, facility, city, or town.

(B) As used in this subdivision (a)(3), "machinery and equipment required by state or federal law or regulations to be installed and utilized by manufacturing and processing plants or facilities" includes:

(i) Machinery and equipment required by state or federal law or regulations to be used in the refining of petroleum-based products to remove sulfur pollutants from the refined product; and

(ii) Any repair parts and repair labor for machinery or equipment required by state or federal law or regulations to be used in the refining of petroleum-based products to remove sulfur pollutants from the refined product.

(b) As used in this section, "manufacturing" or "processing" refers to and include those operations commonly understood within their ordinary meaning and shall also include:

(1) Mining;

(2) Quarrying;

(3) Refining;

(4) Extracting oil and gas;

(5) Cotton ginning;

(6) Drying of rice, soybeans, and other grains;

(7) Manufacturing of feed;

(8) Processing of poultry and eggs and the hatching of poultry;

(9) Printing of all kinds, types, and characters, including the services of overprinting and photographic processing incidental to printing;

(10) Processing of scrap metal into grades and bales for further processing into steel and other metals;

(11) Rebuilding or remanufacturing of used parts and retreading of tires for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors if the rebuilt or remanufactured parts or retreaded tires are not sold directly to the consumer but are sold for resale; and

(12) Producing of protective coatings which increase the quality and durability of a finished product.

(c)(1) It is the intent of this section to exempt only such machinery and equipment as shall be used directly in the actual manufacturing or processing operation at any time from the initial stage when actual manufacturing or processing begins through the completion of the finished article of commerce and the packaging of the finished end product.

(2) As used in this section, "directly" is used to limit the exemption to only the machinery and equipment used in actual production during processing, fabricating, or assembling raw materials or semifinished materials into the form in which such personal property is to be sold in the commercial market.

(3) For purposes of this subsection, the following definitions, specific inclusions, and specific exclusions shall apply and represent the intent of the General Assembly as to its interpretation of the term "used directly":

(A)(i) Machinery and equipment used in actual production include machinery and equipment that meet all other applicable requirements and which cause a recognizable and measurable mechanical, chemical, electrical, or electronic action to take place as a necessary and integral part of manufacturing, the absence of which would cause the manufacturing operation to cease.

(ii) "Directly" does not mean that the machinery and equipment must come into direct physical contact with any of the materials that become necessary and integral parts of the finished product.

(iii) Machinery and equipment which handle raw, semifinished, or finished materials or property before the manufacturing process begins are not used directly in the manufacturing process.

(iv) Machinery and equipment which are necessary for purposes of storing the finished product are not used directly in the manufacturing process.

(v) Machinery and equipment used to transport or handle product while manufacturing is taking place are used directly;

(B) Further, machinery and equipment used directly in the manufacturing process includes without limitation the following:

(i) Molds, frames, cavities, and forms that determine the physical characteristics of the product or its packaging materials at any stage of the manufacturing process;

(ii) Dies, tools, and devices attached to or part of a unit of machinery that determine the physical characteristics of the product or its packaging material at any stage of the manufacturing process;

(iii) Testing equipment to measure the quality of the product at any stage of the manufacturing process;

(iv) Computers and related peripheral equipment that directly control or measure the manufacturing process; and

(v) Machinery and equipment that produce steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process but which are consumed during the course of the manufacturing process and do not become necessary and integral parts of the finished product;

(C) Machinery and equipment "used directly" in the manufacturing process shall not include the following:

(i) Hand tools;

(ii) Machinery, equipment, and tools used in maintaining and repairing any type of machinery and equipment;

(iii) Transportation equipment, including conveyors, used solely before or after the manufacturing process has been started or completed;

(iv) Office machines and equipment including computers and related peripheral equipment not directly used in controlling or measuring the manufacturing process;

(v) Buildings;

(vi) Machinery and equipment used in administrative, accounting, sales, or other such activities of the business;

(vii) All furniture;

(viii) All other machinery and equipment not used directly in manufacturing or processing operations as defined in this section; and

(ix) Machinery and equipment used by a manufacturer to produce or repair replacement dies, molds, repair parts or replacement parts, used or consumed in the manufacturer's own manufacturing process.

(d) The Director of the Department of Finance and Administration may promulgate rules and regulations for the orderly and efficient administration of this section.

History. Acts 1949, No. 487, § 6; 1955, No. 55, § 1; 1957, No. 141, § 1; 1959, No. 35, § 1; 1959, No. 462, § 1; 1961, No. 140, § 1; 1967, No. 113, § 2; 1968 (1st Ex. Sess.), No. 5, § 2; 1971, No. 222, § 3; 1975, No. 760, § 2; 1983, No. 791, § 2; 1983, No. 870, § 2; 1985, No. 492, § 2; 1985, No. 841, § 2; A.S.A. 1947, § 84-3106; Acts 1987, No. 911, § 1; 1993, No. 1250, § 2; 1997, No. 1233, § 2; 1999, No. 854, § 3.; 2009, No. 1208, § 2; 2013, No. 233, § 2.

Amendments. The 2009 amendment, in (c)(3)(B)(i), substituted "frames, cavities, and forms" for "and dies" and deleted "finished" preceding "product," inserted (c)(3)(B)(ii) and redesignated the subsequent subdivisions accordingly, inserted

"at any stage of the manufacturing process" in (c)(3)(B)(i) and (c)(3)(B)(iii), and made related and minor stylistic changes.

The 2013 amendment added (3)(B) and made stylistic changes.

Effective Dates. Acts 2013, No. 233, § 3: Oct. 1, 2013. Effective date clause provided: "Sections 1 and 2 of this act are effective on the first day of the calendar quarter following the effective date of this act."

26-53-115. Exemption for certain aircraft and railroad cars, parts, and equipment.

(a) The tax levied in this subchapter shall not apply to aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by aircraft, airmotive, or railroad companies brought into the State of Arkansas solely and exclusively for:

(1) Refurbishing, conversion, or modification within this state and which is not used or intended for use in this state, and the presence of such tangible personal property within this state shall not be construed as storage, use, or consumption in this state for the purpose of this subchapter if the aircraft, aircraft equipment, and railroad parts, cars, and equipment, or tangible personal property is removed from this state within sixty (60) days from the date of the completion of the refurbishing, conversion, or modification; or

(2) Storage for use outside or inside the State of Arkansas regardless of the length of time any such property is so stored in the State of Arkansas.

(b) If any such property is subsequently initially used in the State of Arkansas, the tax levied by this subchapter shall be and become applicable to the property so used in Arkansas.

(c) The General Assembly determines that it was not the intent of this subchapter to impose the compensating tax upon aircraft, aircraft equipment, and railroad parts, cars, and equipment or to any tangible personal property owned or leased by aircraft, airmotive, or railroad companies as provided in § 26-53-106 and as classified by this section.

History. Acts 1949, No. 487, § 5; 1957, No. 19, § 2; 1959, No. 260, § 2; 1975 (Extended Sess., 1976), No. 1237, §§ 1, 2; A.S.A. 1947, §§ 84-3105, 84-3105n; reen. Acts 1987, No. 772, § 1; 1995, No. 848, § 3; 2009, No. 655, § 33.

Amendments. The 2009 amendment deleted (c)(2), (c)(3), and (d), and redesignated the remaining text of (c).

26-53-123. Liability for tax.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Sales, Use, and Utility Taxes on Retail Transactions of Internet Sellers and Internet Access Providers. 30 A.L.R.6th 341.

26-53-125. Return and payment of tax.

(a)(1)(A) The tax imposed by this subchapter shall be due and payable to the Director of the Department of Finance and Administration monthly on or before the twentieth day of each month except as provided in this subchapter.

(B) When a taxpayer has become liable to file a report with the director, the taxpayer must continue to file a report, even though no tax is due, until the taxpayer notifies the director in writing that the taxpayer is no longer liable for those reports.

(2) Every vendor selling tangible personal property or taxable services for storage, use, distribution, or consumption in this state shall file with the director on or before the twentieth day of each month a sales and use tax return for the preceding monthly period in such form as may be prescribed by the director, showing:

(A) The total tax levied by this subchapter due on all tangible personal property or taxable services sold by the vendor during the preceding monthly period, the storage, use, distribution, or consumption of which is subject to the tax levied by this subchapter; and

(B) Such other information as the director may deem necessary for the proper administration of this subchapter.

(3) The return shall be accompanied by remittance of the amount of the tax required by this subchapter to be collected by the vendor during the period covered by the return.

(4)(A) A return shall be signed by the vendor or the vendor's duly authorized agent but need not be verified by oath.

(B) A return filed electronically does not need to be signed.

(5)(A) A vendor required to collect and remit Arkansas compensating use tax that has average net sales of more than two hundred thousand dollars ($200,000) per month for the preceding calendar year shall make prepayment of the compensating use tax by electronic funds transfer, as defined in § 26-19-101, according to one (1) of the following payment options:

(i)*(a)* Making two (2) compensating use tax payments by electronic funds transfer for the current calendar month. Each payment shall be equal to forty percent (40%) of the compensating use tax due on the monthly average net sales on or before the twelfth and twenty-fourth of each month.

(b) The balance of actual collections for the month shall be remitted with the monthly excise tax report due by the twentieth day of the following month; or

(ii)*(a)* Paying by electronic funds transfer an amount equal to or exceeding eighty percent (80%) of the compensating use tax liability for the current calendar month on or before the twenty-fourth of each month.

(b) The balance of actual collections for the month shall be remitted with the monthly excise tax report due by the twentieth day of the following month.

(B)(i) Failure to pay compensating use tax prepayments when due shall result in the assessment of a penalty equal to five percent (5%) of the amount of each required compensating use tax prepayment.

(ii) If a taxpayer elects to prepay according to subdivision (5)(A)(ii) of this section and fails to pay eighty percent (80%) of the compensating use tax liability by the twenty-fourth of the current month, a penalty shall not be assessed if the taxpayer proves that more than twenty percent (20%) of the taxpayer's compensating use tax liability arose from sales occurring after the twenty-fourth of the current month but before the last day of the current month.

(C) For any electronic funds transfer or report required under subdivision (5)(A) of this section, the due date of which falls on a Saturday, Sunday, legal holiday, or day the Federal Reserve Bank is closed, the electronic funds transfer or report shall be made on the next succeeding business day which is not a Saturday, Sunday, legal holiday, or day the Federal Reserve Bank is closed.

(D) As used in this subdivision (a)(5), "net sales" means total sales price or purchase price less any deductions allowed by this chapter.

(b)(1) Every person purchasing tangible personal property or taxable services of which the storage, use, distribution, or consumption is subject to the tax levied by this subchapter and who has not paid the tax due with respect to the tangible personal property or taxable services to a vendor registered in accordance with the provisions of §§ 26-53-121 and 26-53-122 shall file a return with the director on or before the twentieth day of each month for the preceding monthly period in such a form as may be prescribed by the director showing:

(A) The tax levied by this subchapter due on the tangible personal property or taxable services purchased during the preceding monthly period; and

(B) Such other information as the director may deem necessary for the proper administration of this subchapter.

(2) The return shall be accompanied by a remittance of the amount of the tax required by this subchapter to be paid by the person purchasing the tangible personal property or taxable services during the period covered by the return.

(3)(A) A return shall be signed by the person liable for the tax or the person's authorized agent but need not be verified by oath.

(B) A return filed electronically does not need to be signed.

(c) A vendor that does not have a legal requirement to register under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or this subchapter and is not using a certified service provider or a certified automated system as defined under the Uniform Sales and Use Tax Administration Act, § 26-20-101 et seq., shall submit sales and use tax returns as follows:

(1) Upon registration, the director shall provide the vendor the required Arkansas returns;

(2) The vendor shall file a return any time within one (1) year of the month of initial registration, and future returns may be required on an annual basis in succeeding years; and

(3) In addition to the returns required in subdivision (c)(2) of this section, the vendor may be required to submit returns in the month following any month in which the vendor has accumulated state and local tax funds in the total amount of one thousand dollars ($1,000) or more.

(d)(1) When the average amount of tax for which the taxpayer is liable for the previous fiscal year beginning on July 1 and ending on June 30 does not exceed one hundred dollars ($100) per month, the director may notify the taxpayer that a quarterly report and remittance in lieu of a monthly report may be made on or before July 20, October 20, January 20, and April 20 of each year for the preceding three-month period.

(2) When the average amount of tax for which the taxpayer is liable for the previous fiscal year beginning on July 1 and ending on June 30 does not exceed twenty-five dollars ($25.00) per month, the director may notify the taxpayer that a yearly report and remittance in lieu of a monthly report may be made on or before January 20 of each year for the preceding twelve-month period.

(e)(1) Any report or remittance required under this section of which the due date falls on a Saturday, Sunday, or legal holiday shall be postmarked or transmitted on the next succeeding business day that is not a Saturday, Sunday, or legal holiday.

(2) If the Federal Reserve Bank is closed on a due date that prohibits a vendor from being able to make a remittance through electronic funds transfer, the remittance shall be accepted as timely if made on the next day the Federal Reserve Bank is open.

(3) A report filed in conjunction with a remittance that cannot be made due to the closure of the Federal Reserve Bank shall be accepted as timely if filed in conjunction with the payment on the next day the Federal Reserve Bank is open.

History. Acts 1949, No. 487, § 9; 1979, No. 915, § 2; A.S.A. 1947, § 84-3109; Acts 1991, No. 688, § 3; 2003, No. 664, §§ 3, 4; 2003, No. 1273, §§ 27-30; 2007, No. 181, § 35; 2011, No. 291, § 15; 2011, No. 1142, § 1.

Amendments. The 2011 amendment by No. 291 added (e)(2) and (3)

The 2011 amendment by No. 1142 inserted (a)(5).

26-53-126. Tax on new and used motor vehicles, trailers, or semitrailers — Payment and collection.

(a)(1) Upon being registered in this state, a new or used motor vehicle, trailer, or semitrailer required to be licensed in this state is subject to the tax levied in this subchapter and all other use taxes levied by the state regardless of whether the motor vehicle, trailer, or semitrailer was purchased from a dealer or an individual.

(2)(A) On or before the time for registration as prescribed by § 27-14-903(a), the person making application to register the motor vehicle, trailer, or semitrailer shall pay the taxes to the Director of

the Department of Finance and Administration instead of the taxes being collected by the dealer or individual seller.

(B) The director shall collect the taxes before issuing a license for the motor vehicle, trailer, or semitrailer.

(3) The exemption in § 26-52-401(17) for isolated sales does not apply to the sale of a motor vehicle, trailer, or semitrailer.

(4) If the person making application to register the motor vehicle, trailer, or semitrailer fails to pay the taxes when due:

(A) There is assessed a penalty equal to ten percent (10%) of the amount of taxes due; and

(B) The person making application to register the motor vehicle, trailer, or semitrailer shall pay to the director the penalty under subdivision (a)(4)(A) of this section and the taxes due before the director issues a license for the motor vehicle, trailer, or semitrailer.

(b)(1) When a used motor vehicle, trailer, or semitrailer is taken in trade as a credit or part payment on the sale of a new or used vehicle, trailer, or semitrailer, the tax levied in this subchapter and all other use taxes levied by the state shall be paid on the net difference between the total consideration for the new or used vehicle, trailer, or semitrailer sold and the credit for the used vehicle, trailer, or semitrailer taken in trade.

(2) However, if the total consideration for the sale of the new or used motor vehicle, trailer, or semitrailer is less than four thousand dollars ($4,000), no tax shall be due.

(3)(A) When a used motor vehicle, trailer, or semitrailer is sold by a consumer, rather than traded in as a credit or part payment on the sale of a new or used motor vehicle, trailer, or semitrailer, and the consumer subsequently purchases a new or used vehicle, trailer, or semitrailer of greater value within forty-five (45) days of the sale, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used vehicle, trailer, or semitrailer purchased subsequently and the amount received from the sale of the used vehicle, trailer, or semitrailer sold in lieu of a trade-in.

(B)(i) Upon registration of the new or used motor vehicle, consumers claiming the deduction provided by subdivision (b)(3)(A) of this section shall provide a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle.

(ii) A copy of the bill of sale shall be deposited with the revenue office at the time of registration of the new or used motor vehicle.

(iii) The deduction provided by this subdivision (b)(3) shall not be allowed unless the taxpayer claiming the deduction provides a copy of a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle.

(C) If the taxpayer claiming the deduction provided in this subdivision (b)(3) fails to provide a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for

the vehicle, tax shall be due on the total consideration paid for the new or used vehicle, trailer, or semitrailer without any deduction for the value of the item sold.

(c) The tax imposed by this subchapter shall not apply to a motor vehicle, trailer, or semitrailer to be registered by a bona fide nonresident of this state.

(d) Nothing in this section shall be construed to repeal any exemption from this subchapter.

(e)(1) Upon payment of all applicable registration and title fees, any motor vehicle dealer licensed pursuant to § 27-14-601(a)(6) who has purchased a used motor vehicle may register the vehicle for the sole purpose of obtaining a certificate of title to the vehicle without payment of use tax.

(2) No license plate shall be provided with such registration, and the used vehicle titled by a dealer under this subsection may not be operated on the public highways unless there is displayed on the used vehicle a dealer's license plate issued under the provisions of § 27-14-601(a)(6)(B)(ii).

(f)(1)(A) For purposes of this section, the total consideration for a used motor vehicle shall be presumed to be the greater of the actual sales price as provided on a bill of sale, invoice or financing agreement, or the average loan value of the vehicle as listed in the most current edition of a publication which is generally accepted by the industry as providing an accurate valuation of used vehicles.

(B) If the published loan value exceeds the invoiced price, then the taxpayer must establish to the director's satisfaction that the price reflected on the invoice or other document is true and correct.

(C) If the director determines that the invoiced price is not the actual selling price of the vehicle, then the total consideration will be deemed to be the published loan value.

(2)(A) For purposes of this section, the total consideration for a new or used trailer or semitrailer shall be the actual sales price as provided on a bill of sale, invoice, or financing agreement.

(B) The director may require additional information to conclusively establish the true selling price of the new or used trailer or semitrailer.

History. Acts 1949, No. 487, § 5; 1957, No. 19, § 4; 1959, No. 260, §§ 2, 3; A.S.A. 1947, §§ 84-3105, 84-3105n., 84-3108n; Acts 1991, No. 3, § 7; 1995, No. 268, § 7; 1995, No. 437, § 3; 1997, No. 1232, §§ 3, 4; 2001, No. 1047, § 2; 2009, No. 655, §§ 34, 35; 2011, No. 753, § 2; 2011, No. 983, § 11.

Amendments. The 2009 amendment rewrote (a); and in (f)(2)(B), substituted "new or used trailer or semitrailer" for "trailer."

The 2011 amendment by No. 753 substituted "four thousand dollars ($4,000)" for "two thousand five hundred dollars ($2,500)" in (b)(2).

The 2011 amendment by No. 983 rewrote (a)(4)(B).

Effective Dates. Acts 2011, No. 753 § 3: effective on and after Jan. 1, 2012.

26-53-130. [Repealed.]

Publisher's Notes. This section, concerning exemption for aircraft and railroad equipment in state for refurbishing, etc., was repealed by Acts 2009, No. 655, § 36. The section was derived from Acts 1987, No. 772, § 2.

26-53-131. Credit for tax paid in another state.

(a)(1)(A)(i) The provisions of this subchapter shall not apply to any tangible personal property or taxable services used, consumed, distributed, or stored in this state upon which a like tax equal to or greater than the tax imposed by this subchapter has been paid in another state.

(ii) Proof of payment of such a tax shall be made according to the rules and regulations promulgated by the Director of the Department of Finance and Administration.

(B) If the amount of tax paid in another state is less than the amount of Arkansas compensating tax imposed on the property or services by this subchapter, then the taxpayer shall pay to the director an amount of Arkansas compensating tax sufficient to make the combined amount of tax paid in the other state and this state equal to the total amount of Arkansas compensating tax that would be due if no tax on the property or services had been paid to any other state.

(2) No credit shall be given under this section for taxes paid on such property or services in another state if that state does not grant credit for taxes paid on similar tangible personal property or services in this state.

(b) The provisions of this section shall be cumulative to the provisions of this subchapter and shall not be construed as repealing or modifying any of the provisions of this subchapter.

(c)(1) A credit is not allowed for sales or use taxes paid to another state with respect to the purchase of a motor vehicle, trailer, or semitrailer that was first registered by the purchaser in Arkansas.

(2) [Repealed.]

History. Acts 1989, No. 395, § 3; 1989 (3rd Ex. Sess.), No. 9, § 2; 2003, No. 1273, § 31; 2009, No. 655, § 37; 2011, No. 983, § 12.

Amendments. The 2009 amendment deleted (c)(2).

The 2011 amendment substituted "a motor vehicle, trailer, or semitrailer that was" for "motor vehicles, trailers, or semitrailers which are" in (c)(1).

26-53-132. Refund for construction of child care facility.

(a) A business which operates, or contracts for the operation of, a child care facility for the primary purpose of providing child care services to its employees may obtain a refund of the compensating use tax paid on the purchase of construction materials and furnishings used in the initial construction and equipping of the child care facility after

the facility is licensed pursuant to the Child Care Facility Licensing Act, § 20-78-201 et seq.

(b)(1) As used in this section, "child care facility" means a child care facility licensed under the Child Care Facility Licensing Act, § 20-78-201 et seq. To qualify as a child care facility, the child care shall provide an appropriate early childhood program as defined in § 6-45-103.

(2) A child care facility may be operated for the use of one (1) or more employers.

History. Acts 1993, No. 820, § 2; 1993, No. 987, § 2; 1995, No. 850, § 4; 2009, No. 655, § 38.

Amendments. The 2009 amendment inserted "As used in this section" in (b)(1), and made related and minor stylistic changes.

26-53-141. Durable medical equipment, mobility-enhancing equipment, prosthetic devices, and disposable medical supplies.

(a)(1) Gross receipts or gross proceeds derived from the rental, sale, or repair of durable medical equipment prescribed by a physician, mobility-enhancing equipment prescribed by a physician, a prosthetic device prescribed by a physician, and disposable medical supplies prescribed by a physician shall be exempt from all state and local sales and use taxes.

(2) This exemption shall apply only to durable medical equipment, mobility-enhancing equipment, a prosthetic device, and disposable medical supplies sold to a specific patient pursuant to a prescription written before the sale.

(b) As used in this section:

(1) "Disposable medical supplies" includes without limitation the following:

(A) Ostomy, urostomy, and colostomy supplies;

(B) Enemas, suppositories, and laxatives used in routine bowel care; and

(C) Disposable undergarments and linen savers;

(2)(A) "Durable medical equipment" means equipment, including repair and replacement parts for the equipment, that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury;

(iv) Is not worn in or on the body; and

(v) Is for home use.

(B) "Durable medical equipment" does not include mobility enhancing equipment;

(3)(A) "Mobility enhancing equipment" means equipment, including repair and replacement parts for the equipment, that:

(i) Is primarily and customarily used to provide or increase the ability to move from one (1) place to another and that is appropriate for use either in a home or a motor vehicle;

(ii) Is not generally used by a person with normal mobility; and

(iii) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(B) "Mobility enhancing equipment" does not include durable medical equipment;

(4) "Physician" means a person licensed under the Arkansas Medical Practices Act, § 17-95-401 et seq.;

(5) "Prescription" means an order, formula, or recipe issued in any form and transmitted by an oral, written, electronic, or other means of transmission by a duly licensed physician or practitioner authorized to issue prescriptions under Arkansas law;

(6)(A) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:

(i) Artificially replace a missing portion of the body;

(ii) Prevent or correct physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body.

(B) "Prosthetic device" does not include corrective eyeglasses, contact lenses, and dental prostheses; and

(7) "Repair and replacement parts" includes all components or attachments used in conjunction with durable medical equipment.

(c)(1) Notwithstanding subdivision (a)(2) of this section, a patient may claim the exemption under this section for a wheelchair lift or automobile hand controls prescribed for the patient after the sale if:

(A) The wheelchair lift or automobile hand controls are purchased in conjunction with the purchase of a motor vehicle;

(B) The gross receipts or gross proceeds derived from the sale of the wheelchair lift or automobile hand controls are separately stated on the invoice or bill of sale for the purchase of the motor vehicle; and

(C) The patient has a prescription for the wheelchair lift or automobile hand controls at the time the motor vehicle is registered.

(2) A patient purchasing a wheelchair lift or automobile hand controls directly from a vendor of adaptive medical equipment for subsequent installation shall possess a prescription for the wheelchair lift or automobile hand controls prior to the sale in compliance with subdivision (a)(2) of this section.

History. Acts 1991, No. 414, § 1; 2003, No. 1273, § 2; 2003, No. 1473, § 64; 2007, No. 140, §§ 3, 4; 2007, No. 181, § 45; 2007, No. 860, § 6; 2009, No. 384, § 14; 2011, No. 983, § 13.

Amendments. The 2009 amendment inserted (b)(2)(B) and redesignated the subsequent subdivision accordingly.

The 2011 amendment deleted former (b)(2)(B) and redesignated former (b)(2)(C) as present (b)(2)(B); and added (b)(7).

26-53-144. Certain classes of trucks or trailers.

(a) As used in this section:

(1) "Person" means a natural person who resided in this state at the time of purchasing a truck tractor or semitrailer in another state;

(2) "Semitrailer" means every vehicle with or without motive power, including a pole trailer, drawn by a truck tractor or a Class Six or Class Seven truck as defined by § 27-14-601(a)(3)(F) and (G) that is registered with the International Registration Plan to be engaged in interstate commerce and designed for carrying property; and

(3)(A) "Truck tractor" means a motor vehicle:

(i) Designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn; and

(ii) Registered as a:

(a) Class Five or Class Eight truck as defined by § 27-14-601(a)(3); or

(b) Class Six or Class Seven truck as defined by § 27-14-601(a)(3)(F) and (G) that is not registered with the International Registration Plan to be engaged in interstate commerce.

(B) "Truck tractor" does not include a Class Six or Class Seven truck as defined by § 27-14-601(a)(3)(F) and (G) that is registered with the International Registration Plan to be engaged in interstate commerce.

(b) Except as provided in subsections (d) and (e) of this section, the gross receipts or gross proceeds in excess of nine thousand one hundred fifty dollars ($9,150) derived from the sale of a new or used truck tractor in another state for use in this state are exempt from the Arkansas compensating use tax levied by this subchapter.

(c) The gross receipts or gross proceeds derived from the sale of a new or used semitrailer in another state for use in this state are exempt from the Arkansas compensating use tax levied by this subchapter.

(d) The gross receipts or gross proceeds derived from the sale in another state for use in this state of a new or used Class Six or Class Seven truck as defined by § 27-14-601(a)(3)(F) and (G) that is registered with the International Registration Plan to be engaged in interstate commerce are exempt from the Arkansas compensating use tax levied by this subchapter.

(e) The exemption under subsection (b) of this section does not apply to compensating use taxes levied by any Arkansas city, town, or county.

History. Acts 2003, No. 551, § 2; 2011, No. 1058, § 4.

Amendments. The 2011 amendment inserted "or a Class Six...engaged in interstate commerce" in (a)(2); deleted "Class Six, Class Seven" following "Class Five" in (a)(3)(A)(ii)(*a*); inserted (a)(3)(A)(ii)(*b*) and (a)(3)(B); substituted "subsections (d) and (e)" for "subsection (d)" in (b); in (c), deleted "Except as provided in subsection (d) of this section" at the beginning and deleted "in excess of one thousand dollars ($1,000)" following "gross proceeds"; inserted (d) and redesignated the remaining section as (e); and substituted "under subsection (b) of this section " for "in this section" in present (e).

Effective Dates. Acts 2011, No. 1058, § 6: July 1, 2012.

26-53-145. Food and food ingredients.

(a)(1) The Director of the Department of Finance and Administration shall determine the following conditions:

(A) That federal law authorizes the state to collect sales and use tax from some or all of the sellers that have no physical presence in the State of Arkansas and that make sales of taxable goods and services to Arkansas purchasers;

(B) That initiating the collection of sales and use tax from these sellers would increase the net available general revenues needed to fund state agencies, services, and programs; and

(C)(i) That during a six-month consecutive period, the amount of net available general revenues attributable to the collection of sales and use tax from sellers that have no physical presence in the State of Arkansas is equal to or greater than one hundred fifty percent (150%) of sales and use tax collected under subsection (c) of this section and § 26-52-317 on food and food ingredients.

(ii) The director shall make the determination under subdivision (a)(1)(C)(i) of this section on a monthly basis following the determination that the conditions under subdivision (a)(1)(A) of this section have been met.

(2)(A) Beginning July 1, 2013, the director shall make a monthly determination as to whether the aggregate amount of deductions from net general revenues attributable to the following during the most recently ended six-month consecutive period, as compared with the same six-month period in the prior year, has declined by thirty-five million dollars ($35,000,000) or more:

(i) The Educational Adequacy Fund;

(ii) Bonds issued under the Arkansas College Savings Bond Act of 1989, § 6-62-701 et seq.;

(iii) Bonds issued under the Arkansas Higher Education Technology and Facility Improvement Act of 2005, § 6-62-1101 et seq.;

(iv) The City-County Tourist Facilities Aid Fund;

(v) Amounts disbursed or approved to be disbursed by the Department of Education for desegregation expenses under any desegregation settlement agreement, as certified by the Treasurer of State and the Chief Fiscal Officer of the State under § 6-20-212; and

(vi) Bonds issued under the Arkansas Water, Waste Disposal and Pollution Abatement Facilities Financing Act of 1997 and the Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing Act of 2007, § 15-20-1301 et seq.

(B)(i) In making the determination in this subdivision (a)(2), the director shall consider all economic factors existing at the time of the determination that could potentially affect the decline in the aggregate amount of deductions, including without limitation pending litigation.

(ii) If the consideration of additional economic factors under subdivision (a)(2)(B)(i) of this section results in a determination that the

decline in the aggregate amount of deductions is not likely to remain at that reduced level, the director shall conclude that the conditions in this subdivision (a)(2) have not been met.

(3) When the director finds that all of the conditions in either subdivision (a)(1) or subdivision (a)(2) of this section have been met, then the compensating use taxes levied under subsection (c) of this section shall be levied at the rate of zero percent (0%) on the sale of food and food ingredients beginning on the first day of the calendar quarter that is at least thirty (30) days following the determination of the director.

(b) As used in this section:

(1) "Food" and "food ingredients" mean the same as defined in § 26-53-102 except that "food" and "food ingredients" do not include prepared food; and

(2) "Prepared food" means the same as defined in § 26-53-103 except that "prepared food" does not include:

(A) Food that is only cut, repackaged, or pasteurized by the seller; or

(B) Eggs, fish, meat, and poultry, and foods containing these raw animal foods requiring cooking by the consumer to prevent food-borne illnesses as recommended by the United States Food and Drug Administration in its 2005 Food Code, § 3-401.11, as it existed on January 1, 2007.

(c)(1) Beginning July 1, 2011, in lieu of the compensating use taxes levied on food and food ingredients under §§ 26-53-106 and 26-53-107, there is levied a tax on the privilege of storing, using, distributing, or consuming food and food ingredients at the rate of one and three-eighths percent (1.375%) to be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited into the Educational Adequacy Fund.

(2) The use tax levied under subdivision (c)(1) of this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas compensating use taxes.

(d) The following shall continue to apply to the sales price of food and food ingredients:

(1) The compensating use tax levied under Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county use taxes.

(e) The Department of Finance and Administration shall promulgate rules to implement the provisions of this section.

History. Acts 2005, No. 647, § 2; 2007, No. 110, § 2; 2009, No. 436, § 2; 2009, No. 655, § 39; 2011, No. 755, § 2; 2011, No. 983, § 14; 2013, No. 1398, § 2; 2013, No. 1450, § 2.

Amendments. The 2009 amendment by No. 436, in (c)(1), substituted "July 1, 2009" for "July 1, 2007" and "one and seven-eighths percent (1.875%)" for "two and seven-eighths percent (2.875%)."

The 2009 amendment by No. 655 deleted (b)(1), (b)(2), (b)(3), and (b)(5), which defined "alcoholic beverage," "dietary supplement," "food and food ingredients," and "tobacco," respectively, inserted (b)(1), and redesignated the remaining subdivisions accordingly; rewrote (b)(2); and made related changes.

The 2011 amendment by No. 755, in (c)(1), substituted "July 1, 2011" for July 1, 2009" and "one and three-eighths percent (1.375%)" for "one and seven-eighths percent (1.875%)."

The 2011 amendment by No. 983 subdivided (b)(2).

The 2013 amendment by identical acts Nos. 1398 and 1450 inserted present (a)(2) and redesignated the remaining subdivision accordingly; in present (a)(3), inserted "either" and "or subdivision (a)(2)"; and substituted "calendar quarter that is at least thirty (30) days" for "second calendar month."

Effective Dates. Acts 2013, No. 1398, § 3, and No. 1450, § 3: July 1, 2013.

26-53-147. Heavy equipment.

(a) Every person purchasing heavy equipment as defined in § 26-52-318 for storage or use within this state from a dealer located outside of this state, and who does not pay tax to the out-of-state dealer, is liable for the use tax imposed by this chapter.

(b) The purchaser shall pay the use tax to the Director of the Department of Finance and Administration.

(c) If the purchaser pays the use tax to an out-of-state dealer, the purchaser shall present proof to the director that the Arkansas use tax has been paid.

History. Acts 2005, No. 1693, § 2; 2009, No. 682, § 2.

Amendments. The 2009 amendment deleted "and receive a decal under § 26-52-318 to affix to each piece of heavy equipment purchased" in (b); deleted "and receive a decal from the director to affix to each piece of heavy equipment purchased" in (c); and made minor stylistic and punctuation changes.

Effective Dates. Acts 2009, No. 682, § 3, provided: "Sections 1 and 2 of this act are effective on the first day of the calendar quarter following the effective date of this act."

26-53-148. Natural gas and electricity used by manufacturers. [Effective until July 1, 2014.]

(a)(1) Beginning July 1, 2007, in lieu of the tax levied in §§ 26-53-106 and 26-53-107, there is levied an excise tax on the sales price of natural gas and electricity purchased by a manufacturer for use directly in the actual manufacturing process at the rate of four and three-eighths percent (4.375%).

(2) Beginning July 1, 2008, the tax rate levied in subdivision (a)(1) of this section shall be imposed at the rate of three and seven-eighths percent (3.875%).

(3)(A) Beginning July 1, 2009, the tax rate levied in subdivision (a)(1) of this section shall be imposed at the rate of three and one-eighth percent (3.125%).

(B)(i) The Director of the Department of Finance and Administration shall monitor the amount of tax savings received by all taxpayers as a result of the reduction in the tax rate from that levied in §§ 26-53-106 and 26-53-107 to that levied in subdivision (a)(3)(A) of this section.

(ii) When the director determines that the amount of tax savings resulting from the determination described in subdivision (a)(3)(B)(i) of this section plus any gross receipts tax savings described in § 26-52-319(a)(3)(B) would reach twenty-seven million dollars ($27,000,000) during a fiscal year, the director shall not process any further refund claims through a refund process during the fiscal year for taxpayers seeking to claim the reduced tax rate provided by this section. The amount of twenty-seven million dollars ($27,000,000) is intended to cover the accumulated but unclaimed reduction of sales and use tax on natural gas and electricity as provided by Acts 2007, No. 185, as well as the additional reduction provided by Acts 2009, No. 695.

(iii) If the director determines that discontinuing refund payments as provided in subdivision (a)(3)(B)(ii) of this section is insufficient to prevent the amount of tax savings from exceeding twenty-seven million dollars ($27,000,000) during a fiscal year, the director may decline to accept any amended return filed by a taxpayer to claim an overpayment resulting from the reduced tax rate provided by this section for a period other than the period for which a tax return is currently due.

(C)(i) Refund requests and amended returns filed with the director to claim the overpayment resulting from the reduced rate in subdivision (a)(3)(A) of this section will be processed in the order they are received by the director. A taxpayer that does not receive a refund after the refund and amended return process has ceased under subdivision (a)(3)(B) of this section shall be given priority to receive a refund during the subsequent fiscal year. The unpaid refunds from the prior fiscal year shall be processed before any refund claims filed in the current fiscal year to claim the benefit of this section.

(ii) The statute of limitations for refunds and amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to allow the payment of a refund under the process provided in subdivision (a)(3)(C)(i) of this section.

(4)(A) Beginning July 1, 2011, the tax rate levied in subdivision (a)(1) of this section shall be imposed at the rate of two and five-eighths percent (2.625%).

(B)(i) The Director of the Department of Finance and Administration shall monitor the amount of tax savings received by all taxpayers as a result of the reduction in the tax rate from that levied in §§ 26-53-106 and 26-53-107 to that levied in subdivision (a)(4)(A) of this section.

(ii) When the director determines that the amount of tax savings resulting from the determination described in subdivision (a)(4)(B)(i)

of this section plus any gross receipts tax savings described in § 26-52-319(a)(4)(B) would reach twenty-seven million dollars ($27,000,000) during a fiscal year, the director shall not process any further refund claims through a refund process during the fiscal year for taxpayers seeking to claim the reduced tax rate provided by this section. The amount of twenty-seven million dollars ($27,000,000) is intended to cover the accumulated but unclaimed reduction of sales and use tax on natural gas and electricity as provided by this section.

(iii) If the director determines that discontinuing refund payments as provided in subdivision (a)(4)(B)(ii) of this section is insufficient to prevent the amount of tax savings from exceeding twenty-seven million dollars ($27,000,000) during a fiscal year, the director may decline to accept any amended return filed by a taxpayer to claim an overpayment resulting from the reduced tax rate provided by this section for a period other than the period for which a tax return is currently due.

(C)(i) Refund requests and amended returns filed with the director to claim the overpayment resulting from the reduced rate in subdivision (a)(4)(A) of this section will be processed in the order they are received by the director. A taxpayer that does not receive a refund after the refund and amended return process has ceased under subdivision (a)(4)(B) of this section shall be given priority to receive a refund during the subsequent fiscal year. The unpaid refunds from the prior fiscal year shall be processed before any refund claims filed in the current fiscal year to claim the benefit of this section.

(ii) The statute of limitations for refunds and amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to allow the payment of a refund under the process provided in subdivision (a)(4)(C)(i) of this section.

(5) The taxes levied in this subsection shall be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the tax, interest, penalties, and costs received by the director shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Educational Adequacy Fund.

(6)(A) The excise tax levied in this section applies only to natural gas and electricity purchased for use directly in the actual manufacturing process.

(B) Natural gas and electricity purchased for any other purpose shall be subject to the full compensating use tax levied under §§ 26-53-106 and 26-53-107.

(7) The excise tax levied in this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas compensating use taxes.

(b) As used in this section, "manufacturer" means a:

(1) Manufacturer classified within sectors 31 through 33 of the North American Industry Classification System, as in effect on January 1, 2011; or

(2) Generator of electric power classified within sector 22 of the North American Industry Classification System, as in effect on January 1, 2011, that uses natural gas to operate a new or existing generating facility that uses combined-cycle gas turbine technology.

(c)(1) Except as provided in subdivision (c)(2)(C) of this section, the tax rate under subsection (a) of this section does not apply to a manufacturer as defined in subdivision (b)(2) of this section.

(2) In lieu of the tax rate under subsection (a) of this section, the excise tax rate levied on the sales price of natural gas and electricity purchased by a manufacturer as defined in subdivision (b)(2) of this section to operate a new or existing facility that uses combined-cycle gas turbine technology is as follows:

(A) Beginning January 1, 2012, five and one-eighths percent (5.125%);

(B) Beginning January 1, 2013, four and one-eighths percent (4.125%); and

(C) Beginning January 1, 2014, two and five-eighths percent (2.625%).

(3)(A) The amount of tax savings described in subdivision (a)(4)(B)(i) of this section does not include any tax savings received by a manufacturer as defined in subdivision (b)(2) of this section.

(B) Manufacturers as defined in subdivision (b)(2) of this section are not subject to the dollar limitations on refunds and amended returns stated in subsection (a) of this section.

(4) The taxes levied in this subsection shall be distributed in the same manner as set out in subsection (a) of this section.

(d) Natural gas and electricity subject to the reduced tax rate levied in this section shall be separately metered from natural gas and electricity used for any other purpose by the manufacturer or otherwise established under subsection (f) of this section.

(e) Before purchasing any natural gas or electricity at the reduced excise tax rate levied in this section, the director may require any seller of natural gas or electricity to obtain a certificate from the consumer, in the form prescribed by the director, certifying that the manufacturer is eligible to purchase natural gas and electricity at the reduced excise tax rate.

(f) The director shall promulgate rules for the proper administration of this section.

(g) The purchase of natural gas and electricity by a manufacturer shall continue to be subject to:

(1) The excise tax levied under the Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county compensating use taxes.

History. Acts 2007, No. 185, § 2; 2009, No. 691, § 2; 2009, No. 695, § 2; 2011, No. 754, § 3; 2011, No. 983, § 15.

A.C.R.C. Notes. Acts 2009, No. 691, and Acts 2009, No. 695, are identical acts that amended subsection (a) of this section. Acts 2009, No. 695, was used to codify subsection (a) of this section pursuant to § 1-2-207(a).

Acts 2011, No. 754, § 1, provided: "The General Assembly finds that:

"(1) The cost of manufacturing continues to climb;

"(2) The state unemployment rate is extremely high, and the economy has dramatically affected manufacturers, which has resulted in numerous layoffs;

"(3) Decreasing the sales and use tax rate on natural gas and electricity used by manufacturers would increase employment and production, which, in turn, would provide more lucrative employment opportunities for Arkansans;

"(4) There is a need for additional electrical generation in the state to supply the utilities that serve state individuals and industry;

"(5) Natural gas-fired, combined-cycle generation is the cleanest and most efficient energy produced from fossil fuel used to generate electricity, and it is in the best interest of the state to encourage the use of this technology for generating electricity;

"(6) The state is at a competitive disadvantage compared to the surrounding states to attract and retain the building and operating of high-efficiency electric power generators because the state imposes a six percent (6%) sales tax on the purchase of natural gas used to generate the electricity;

"(7) The state has an abundant supply of natural gas to power high-efficiency, combined-cycle technology electric power generators, and the disadvantage of the high tax should be removed as an incentive to utilities and private industry to construct and operate high-efficiency generating facilities; and

"(8) Other manufacturers in the state enjoy a tax reduction on natural gas used in manufacturing, and these high-efficiency, combined-cycle technology electric power generators that manufacture electricity for resale on the wholesale market should be granted the same exemption as other manufacturers."

The amendments to this section by Acts 2011, No. 983, § 15, are superseded by the amendments to this section by Acts 2011, No. 754, § 3, pursuant to Acts 2011, No. 983, § 23.

Publisher's Notes. For text of section effective July 1, 2014, see the following version.

Amendments. The 2009 amendment by identical acts Nos. 691 and 695 inserted (a)(3) and redesignated the subsequent subdivisions accordingly.

The 2011 amendment by No. 754 substituted "26-53-107" for "26-53-107(a)-(d)" in (a)(1) and (a)(6)(B); inserted (a)(4) and (c) and redesignated the remaining subdivisions accordingly; rewrote (b); substituted "established under subsection (f)" for "established in accordance with the rules issued under subsection (e)" in (d); and deleted "have and be invested with full power and authority to" preceding "promulgate" in (f).

The 2011 amendment by No. 983, in (a)(1), deleted "Beginning July 1, 2007" at the beginning and substituted "three and one-eighth percent (3⅛%)" for "of four and three-eighths 20 percent (4.375%)"; deleted former (a)(2) and (a)(3)(A) and redesignated former (a)(3)(B)(i) through (iii) as (a)(2)(A) through (C), and former (a)(3)(C)(i) and (ii) as (a)(3)(A) and (B); substituted "subdivision (a)(1)" for "subdivision (a)(3)(A)" in (a)(2)(A); in (a)(2)(B), substituted "subdivision (a)(2)(A)" for "subdivision (a)(3)(B)(i)," "§ 26-52-319(a)(2)" for "26-52-319(a)(3)(B)," and "this section and § 26-52-319" for "Acts 2007, No. 185, as well as the additional reduction provided by Acts 2009, No. 695"; substituted "subdivision (a)(2)(B)" for "subdivision (a)(3)(B)(ii)" in (a)(2)(C); in (a)(3)(A), substituted "subdivision (a)(1)" for "subdivision (a)(3)(A)" and "subdivision (a)(2)" for "subdivision (a)(3)(B)"; and substituted "subdivision (a)(3)(A)" for "subdivision (a)(3)(C)(i)" in (a)(3)(B).

26-53-148. Natural gas and electricity used by manufacturers. [Effective July 1, 2014.]

(a)(1)(A) Beginning July 1, 2014, in lieu of the tax levied in §§ 26-53-106 and 26-53-107, there is levied an excise tax on the sales price of natural gas and electricity purchased by a manufacturer for use directly in the actual manufacturing process at the rate of one percent (1%).

(B)(i) Beginning July 1, 2015, the compensating use tax levied in §§ 26-53-106 and 26-53-107 and this section shall be levied at a rate of zero percent (0%) on natural gas and electricity purchased by a manufacturer for use directly in the actual manufacturing process.

(ii) However, natural gas and electricity purchased by a manufacturer for use directly in the actual manufacturing process shall remain subject to the excise tax of one-eighth of one percent (⅛ of 1%) levied in Arkansas Constitution, Amendment 75, and the temporary excise tax of one-half percent (½%) levied in Arkansas Constitution, Amendment 91.

(2) The taxes levied in this subsection shall be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the tax, interest, penalties, and costs received by the Director of the Department of Finance and Administration shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Educational Adequacy Fund.

(3)(A) The excise tax levied in this section applies only to natural gas and electricity purchased for use directly in the actual manufacturing process.

(B) Natural gas and electricity purchased for any other purpose shall be subject to the full compensating use tax levied under §§ 26-53-106 and 26-53-107.

(4) The excise tax levied in this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas compensating use taxes.

(b) As used in this section, "manufacturer" means a:

(1) Manufacturer classified within sectors 31 through 33 or sector 115111 of the North American Industry Classification System, as in effect on January 1, 2011; or

(2) Generator of electric power classified within sector 22 of the North American Industry Classification System, as in effect on January 1, 2011, that uses natural gas to operate a new or existing generating facility that uses combined-cycle gas turbine technology.

(c)(1) Except as otherwise provided in this subsection, the tax rate under subsection (a) of this section does not apply to a manufacturer as defined in subdivision (b)(2) of this section.

(2) In lieu of the tax rate under subsection (a) of this section, the excise tax rate levied on the sales price of natural gas and electricity purchased by a manufacturer as defined in subdivision (b)(2) of this section to operate a new or existing facility that uses combined-cycle gas turbine technology is as follows:

(A) Beginning January 1, 2012, five and one-eighth percent (5.125%);

(B) Beginning January 1, 2013, four and one-eighth percent (4.125%);

(C) Beginning January 1, 2014, two and five-eighths percent (2.625%); and

(D) Beginning January 1, 2015, one percent (1%).

(3) The taxes levied in this subsection shall be distributed in the same manner as stated in subsection (a) of this section.

(d) Natural gas and electricity subject to the reduced tax rate levied in this section shall be separately metered from natural gas and electricity used for any other purpose by the manufacturer or otherwise established under subsection (f) of this section.

(e) Before purchasing any natural gas or electricity at the reduced excise tax rate levied in this section, the director may require any seller of natural gas or electricity to obtain a certificate from the consumer, in the form prescribed by the director, certifying that the manufacturer is eligible to purchase natural gas and electricity at the reduced excise tax rate.

(f) The director shall promulgate rules for the proper administration of this section.

(g) The purchase of natural gas and electricity by a manufacturer shall continue to be subject to:

(1) The excise tax levied under Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county compensating use taxes.

History. Acts 2007, No. 185, § 2; 2009, No. 691, § 2; 2009, No. 695, § 2; 2011, No. 754, § 3; 2011, No. 983, § 15; 2013, No. 1411, § 2.

A.C.R.C. Notes. Acts 2009, No. 691, and Acts 2009, No. 695, are identical acts that amended subsection (a) of this section. Acts 2009, No. 695, was used to codify subsection (a) of this section pursuant to § 1-2-207(a).

Acts 2011, No. 754, § 1, provided: "The General Assembly finds that:

"(1) The cost of manufacturing continues to climb;

"(2) The state unemployment rate is extremely high, and the economy has dramatically affected manufacturers, which has resulted in numerous layoffs;

"(3) Decreasing the sales and use tax rate on natural gas and electricity used by manufacturers would increase employment and production, which, in turn, would provide more lucrative employment opportunities for Arkansans;

"(4) There is a need for additional electrical generation in the state to supply the utilities that serve state individuals and industry;

"(5) Natural gas-fired, combined-cycle generation is the cleanest and most efficient energy produced from fossil fuel used to generate electricity, and it is in the best interest of the state to encourage the use of this technology for generating electricity;

"(6) The state is at a competitive disadvantage compared to the surrounding states to attract and retain the building and operating of high-efficiency electric power generators because the state im-

poses a six percent (6%) sales tax on the purchase of natural gas used to generate the electricity;

"(7) The state has an abundant supply of natural gas to power high-efficiency, combined-cycle technology electric power generators, and the disadvantage of the high tax should be removed as an incentive to utilities and private industry to construct and operate high-efficiency generating facilities; and

"(8) Other manufacturers in the state enjoy a tax reduction on natural gas used in manufacturing, and these high-efficiency, combined-cycle technology electric power generators that manufacture electricity for resale on the wholesale market should be granted the same exemption as other manufacturers."

The amendments to this section by Acts 2011, No. 983, § 15, are superseded by the amendments to this section by Acts 2011, No. 754, § 3, pursuant to Acts 2011, No. 983, § 23.

Publisher's Notes. For text of section effective until July 1, 2014, see the preceding version.

Amendments. The 2009 amendment by identical acts Nos. 691 and 695 inserted (a)(3) and redesignated the subsequent subdivisions accordingly.

The 2011 amendment by No. 754 substituted "26-53-107" for "26-53-107(a)-(d)" in (a)(1) and (a)(6)(B); inserted (a)(4) and (c) and redesignated the remaining subdivisions accordingly; rewrote (b); substituted "established under subsection (f)" for "established in accordance with the rules issued under subsection (e)" in (d); and deleted "have and be invested with full power and authority to" preceding "promulgate" in (f).

The 2011 amendment by No. 983, in (a)(1), deleted "Beginning July 1, 2007" at the beginning and substituted "three and one-eighth percent (3⅛%)" for "of four and three-eighths 20 percent (4.375%)"; deleted former (a)(2) and (a)(3)(A) and redesignated former (a)(3)(B)(i) through (iii) as (a)(2)(A) through (C), and former (a)(3)(C)(i) and (ii) as (a)(3)(A) and (B); substituted "subdivision (a)(1)" for "subdivision (a)(3)(A)" in (a)(2)(A); in (a)(2)(B), substituted "subdivision (a)(2)(A)" for "subdivision (a)(3)(B)(i)," "§ 26-52-319(a)(2)" for "26-52-319(a)(3)(B)," and "this section and § 26-52-319" for "Acts 2007, No. 185, as well as the additional reduction provided by Acts 2009, No. 695"; substituted "subdivision (a)(2)(B)" for "subdivision (a)(3)(B)(ii)" in (a)(2)(C); in (a)(3)(A), substituted "subdivision (a)(1)" for "subdivision (a)(3)(A)" and "subdivision (a)(2)" for "subdivision (a)(3)(B)"; and substituted "subdivision (a)(3)(A)" for "subdivision (a)(3)(C)(i)" in (a)(3)(B).

The 2013 amendment redesignated former (a)(1) as present (a)(1)(A), and substituted "July 1, 2014" for "July 1, 2007" and "one percent (1%)" for "four and three eighths percent (4.375%)"; deleted (a)(2) through (a)(4), and redesignated former (a)(5) through (a)(7) as present (a)(2) through (a)(4); inserted (a)(1)(B); substituted "Director of the Department of Finance and Administration" for "director" in present (a)(2)(A); inserted "or sector 115111" in (b)(1); in (c)(1), inserted "otherwise" and substituted "this subsection" for "subdivision (c)(2)(C) of this section"; substituted "one-eighth" for "one-eighths" in (c)(2)(A) and (c)(2)(B); inserted (c)(2)(D); deleted former (c)(3); and redesignated former (c)(4) as present (c)(3), and substituted "stated" for "set out."

Effective Dates. Acts 2013, No. 1411, § 7: July 1, 2014, by its own terms.

26-53-149. Partial replacement and repair of certain machinery and equipment. [Effective July 1, 2014.]

(a) The taxes levied under §§ 26-53-106 and 26-53-107 on the privilege of storing, using, distributing, or consuming the following within this state are subject to a refund as provided in this section:

(1) Machinery and equipment purchased to modify, replace, or repair, either in whole or in part, existing machinery or equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging articles of commerce at a manufacturing or processing plant or facility in this state; and

(2) Service relating to the initial installation, alteration, addition, cleaning, refinishing, replacement, or repair of machinery or equipment described in subdivision (a)(1) of this section.

(b) Beginning July 1, 2014, the taxes levied under §§ 26-53-106 and 26-53-107 that are subject to a refund under this section are the taxes in excess of four and seven-eighths percent (4.875%).

(c) The excise tax of one-eighth of one percent (0.125%) levied in Arkansas Constitution, Amendment 75, and the temporary excise tax of one-half percent (0.5%) levied in Arkansas Constitution, Amendment 91, are not subject to refund under this section.

(d) As used in this section:

(1) "Manufacturing" or "processing" means the same as defined under § 26-53-114(b) and includes activities described in subsection (a) of this section, both independently and collectively; and

(2) "Used directly" means the same as defined under § 26-53-114(c).

(e) All existing excise tax exemptions, including without limitation exemptions under §§ 26-52-402 and 26-53-114, remain in full force and effect and are not limited by this section.

(f) To claim the benefit of the tax refund under this section, a taxpayer shall hold a direct pay sales and use tax permit from the Department of Finance and Administration and shall claim the tax refund under the direct pay permit.

(g) The following provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., apply to claims for a refund under this section:

(1) The time limitations that apply to claims for a refund of an overpayment of state tax; and

(2) The procedures that apply to the disallowance or proposed disallowance of claims for a refund.

History. Acts 2013, No. 1404, § 2.

Effective Dates. Acts 2013, No. 1404, § 4: July 1, 2014. Effective date clause provided: "This act is effective on and after July 1, 2014."

CHAPTER 54

CORPORATE FRANCHISE TAXES

A.C.R.C. Notes. Acts 2013, No. 1041, § 1, provided: "As used in this act:

"(1) 'Franchise tax' means a tax under the Arkansas Corporate Franchise Tax Act of 1979, § 26-54-101 et seq;

"(2) 'Revoked entity' means a corporation, foreign or domestic, whose charter or authority to conduct business was revoked by the Secretary of State effective on or before December 31, 2012, for failure to pay franchise taxes; and

"(3) 'Taxpayer' means an entity required to remit franchise taxes under the Arkansas Corporate Franchise Tax Act of

1979, § 26-54-101 et seq."

Acts 2013, No. 1041, § 2, provided: "The Secretary of State shall administer a franchise tax penalty and interest amnesty program for taxpayers who make a payment of franchise taxes for revoked entities during the period of September 1, 2013, through December 31, 2013."

Acts 2013, No. 1041, § 3, provided: "The Secretary of State shall develop amnesty tax forms to be completed and filed by the taxpayer."

Acts 2013, No. 1041, § 4, provided: "(a) Upon written application and payment by the taxpayer of all delinquent franchise taxes due, the taxpayer shall not be subject to:

"(1) Payment of any penalties or interest on the delinquent franchise taxes; and

"(2) Shall not be subject to any further collection activity for the delinquent franchise taxes under this act.

"(b) Amnesty will be granted only to a taxpayer who:

"(1) Applies for amnesty during the period of September 1, 2013, through December 31, 2013;

"(2) Submits all applicable franchise tax reports and forms during the period of September 1, 2013, through December 31, 2013; and

"(3) Pays the tax due as computed by the Secretary of State, during the period of September 1, 2013, through December 31, 2013.

"(c) Failure to pay franchise taxes not eligible for amnesty when due will invalidate the amnesty granted under this act."

Acts 2013, No. 1041, § 5, provided: "The Secretary of State may publicize the tax amnesty program by any medium available to further public awareness of and participation in the program."

Effective Dates. Acts 2013, No. 1093, § 2: Apr. 11 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is inconsistency in the law concerning the imposition of a penalty for failure to pay corporate franchise taxes; that this act establishes a consistent date for the payment of the tax before a penalty is imposed; and that this act is immediately necessary because it will provide a consist date for payment of the tax. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-54-102. Definitions.

(a) As used in this chapter, "corporation" means any corporation, domestic and foreign, active and inactive, which is organized in or qualified under the laws of the State of Arkansas and includes, but is not limited to, any person or group of persons, any association, joint-stock company, business trust, or other organizations with or without charter constituting a separate legal entity of relationship with the purpose of obtaining some corporate privilege or franchise which is not allowed to them as individuals and which is exercising, or attempting to exercise, corporate-type acts, whether or not existing by virtue of a particular statute.

(b) However, "corporation" does not include:

(1) Nonprofit corporations;

(2) Corporations which are organizations exempt from the federal income tax; or

(3) Organizations formed under or governed by the Uniform Partnership Act (1996), § 4-46-101 et seq., or the Uniform Limited Partnership Act (2001), § 4-47-101 et seq.

History. Acts 1979, No. 889, § 2; A.S.A. 1947, § 84-1834; Acts 1987, No. 19, § 1; 2009, No. 655, § 40.

Amendments. The 2009 amendment rewrote (b)(3).

26-54-107. Computation of tax — Penalty -- Relief.

(a) The Secretary of State from the information reported and from any other information received by him or her bearing upon the subject shall compute the amount of tax of each corporation at the rate or rates provided by this chapter.

(b)(1)(A) If the taxpayer fails to comply with the filing and remittance requirements under § 26-54-105(c) by May 1, the Secretary of State shall assess the corporation a penalty of twenty-five dollars ($25.00) plus interest on the tax and penalty from the date due until paid at the rate of ten percent (10%) per year.

(B) However, the franchise tax, penalty, and interest for any tax year shall not exceed two (2) times the corporation's tax owed.

(2) On or before November 1 of each year, the Secretary of State shall mail notice to the corporation at its last known address stating that the corporation is subject to forfeiture of its corporate charter under § 26-54-111 for the failure to pay corporate franchise tax.

(c)(1) A corporation may seek relief from any proposed assessment of taxes pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) This method shall be the exclusive method for seeking relief.

History. Acts 1979, No. 889, § 6; A.S.A. 1947, § 84-1838; Acts 1987, No. 19, § 3; 1991, No. 1046, § 3; 1991, No. 1140, § 3; 1999, No. 1037, § 1; 2013, No. 1093, § 1.

Amendments. The 2013 amendment, in (b)(1)(A), substituted "requirements under § 26-54-105(c) by May 1" for "requirements prescribed in § 26-54-105(c) by June 1" and "year" for "annum."

Effective Dates. Acts 2013, No. 1093, § 2: April 11, 2013.

26-54-111. Charter forfeiture for failure to pay tax — Procedure.

(a) On or before January 31 of each year, the Secretary of State shall proclaim as forfeited the corporate charters or authorities, as the case may be, of all corporations, both domestic and foreign that according to the Secretary of State's records are delinquent in the payment of the annual franchise tax for a prior year.

(b) A copy of the proclamation, or applicable portion thereof, shall be furnished to each other official or agency of the state which is authorized to issue corporation charters or authorities. Upon their receipt of the proclamation, the several officials shall at once correct their respective records in accordance with the proclamation.

History. Acts 1979, No. 889, § 10; 1983, No. 828, § 1; A.S.A. 1947, § 84-1842; Acts 1987, No. 19, § 6; 1991, No. 1046, § 4; 1991, No. 1140, § 4; 2013, No. 1079, § 1.

Amendments. The 2013 amendment, in (a), substituted "January 31" for "January 1" and made stylistic changes.

26-54-112. Reinstatement of corporations.

CASE NOTES

Analysis

In General.
Retroactive.

In General.

In a legal malpractice case where a client asserted that an attorney failed to advise him to reinstate the corporate charter pursuant to this section in order to limit the client's personal liability for corporate debts in an underlying action involving a promissory note, summary judgment in favor of the attorney and his law firm was appropriate because the corporate charter was revoked several months before the effective date of 1999 Ark. Acts 522 and the issue of retroactive application of 1999 Ark. Acts 522 had not been settled by the court of highest jurisdiction. Evans v. Hamby, 2011 Ark. 69, 378 S.W.3d 723 (2011).

Retroactive.

Trial court did not err by finding that this sections's provisions regarding retroactivity applied to defeat rights acquired during a period of forfeiture, which was due to a failure to pay franchise taxes; because the reinstatement of a corporate charter was retroactive to the date of revocation, a motion to dismiss a corporation's lawsuit was properly denied. Beck v. Inter City Transp., Inc., 2012 Ark. App. 370, — S.W.3d — (2012).

CHAPTER 55
MOTOR FUELS TAXES

SUBCHAPTER.
1. General Provisions.
2. Motor Fuel Tax Law.
6. Shipments of Motor Fuels.
7. Fuel Imported in Supply Tanks.
8. Unlicensed Out-of-State Trucks.
9. Vehicle Tank Inspections.
10. Additional Taxes and Fees.

Subchapter 1 — General Provisions

SECTION.
26-55-102. City motor bus system operating across state lines.

26-55-102. City motor bus system operating across state lines.

(a) The fee to be paid to this state for the registration and licensing of any motor bus used by a system of motor buses operating in lieu of a street car system in adjoining cities or incorporated towns which are separated by a state line shall not exceed the fee provided by law in the adjoining state for such bus when:

(1) More than one-half (½) of the mileage of the routes regularly run by the motor bus system is outside this state;

(2) More than one-half (½) of the gross revenues of such a system is derived from its operation outside this state and from the carrying of passengers from outside this state into this state;

(3) Such system is operated in this state under a franchise contract with the Arkansas city or town;

(4) The motor buses are not operated under any conditions whatever on any of the roads or highways in this state outside the corporate limits of such city or town; and

(5) The motor bus system shall pay to this state a motor vehicle fuel tax at the applicable rate as fixed by the law of this state upon at least one-half (½) of the motor vehicle fuel used in the operation of the system as a whole.

(b) At any time the adjoining city or town in Arkansas by ordinances may levy a privilege tax on the buses sufficient to reimburse the city or town for the use of its streets.

History. Acts 1935, No. 185, § 1; Pope's Dig., § 6881; A.S.A. 1947, § 75-1132; Acts 2009, No. 655, § 41.

Amendments. The 2009 amendment rewrote (b).

Subchapter 2 — Motor Fuel Tax Law

26-55-213. Distributor's license — Requirement — Penalty for noncompliance.

(a) It shall be unlawful for any distributor to receive, use, sell, or distribute any motor fuel or to engage in business within this state unless the distributor is the holder of an uncancelled license issued by the Director of the Department of Finance and Administration to engage in such business or, if such distributor is an agent, commission or otherwise, of a distributor as defined in this subchapter, unless the

agent is the holder of a certified duplicate copy of an uncancelled license issued by the director to the agent's principal.

(b)(1) Upon conviction, a person who engages in business in the State of Arkansas as a distributor without being the holder of an uncancelled license to engage in the business is guilty of an unclassified misdemeanor and shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) or imprisonment for a term of not less than thirty (30) days and not more than one (1) year, or both fine and imprisonment.

(2) Each day or any part thereof during which any person shall engage in business as a distributor without being the holder of an uncancelled license shall constitute a separate offense within the meaning of this section.

History. Acts 1941, No. 383, §§ 7, 25; 1943, No. 250, § 1; 1945, No. 166, § 1; A.S.A. 1947, §§ 75-1109, 75-1127; Acts 2009, No. 655, § 42.

Amendments. The 2009 amendment, in (b)(1), inserted "is guilty of an unclassified misdemeanor and," deleted "in the county jail" following "or imprisonment," and made related and minor stylistic changes.

26-55-214. Distributor's license — Application and bond.

(a) To procure a distributor's license, every distributor shall file with the Director of the Department of Finance and Administration an application upon oath and in a form prescribed by the director, setting forth:

(1) The name under which the distributor will transact business within the State of Arkansas;

(2) The location, with street address, of its principal office or place of business within this state and all of its separate places of business within this state; and

(3) The name and complete residence address of the owner or the names and addresses of the partners, if such distributor is a partnership, or the names and addresses of the principal officer, if such distributor is a corporation or association.

(b)(1) Concurrent with the filing of an application for a distributor's license, every distributor shall file with the director a bond of the character stipulated and in the amount provided for in § 26-55-222.

(2) No license shall be issued upon any application unless accompanied by such bond, nor, if the applicant is a foreign corporation, unless it is at such time properly qualified under the laws of the State of Arkansas to do business therein.

(c) The director shall keep and file all applications and bonds with an alphabetical index together with a record of all licensed distributors.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; 1965 (1st Ex. Sess.), No. 41, § 5; A.S.A. 1947, § 75-1109; Acts 2009, No. 655, §§ 43–45.

Amendments. The 2009 amendment substituted "a distributor's" for "such" in the introductory language of (a); in (b)(1), inserted "distributor's" and deleted "and

26-55-228 [repealed]" following "§ 26-55-222"; and made related and minor stylistic changes.

26-55-218. Distributor's license — Expiration.

A distributor's license remains in effect until cancelled as provided in this subchapter.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; 1965 (1st Ex. Sess.), No. 41, § 6; A.S.A. 1947, § 75-1109; Acts 2009, No. 655, § 46.

Amendments. The 2009 amendment rewrote the section.

26-55-229. Tax reports.

(a) For the purpose of determining the amount of the tax imposed by this subchapter, the Director of the Department of Finance and Administration may require such supporting documents as the director may deem necessary to assure accurate reporting.

(b)(1) The reports shall be filed on forms prescribed by the director and shall be filed with the director on or before the twenty-fifth day of each calendar month following the reporting month in question.

(2) Once a distributor has become liable to file a monthly report with the director, the distributor must continue to file a monthly report, even though no tax is due, until such time as the distributor notifies the director in writing that the distributor is no longer liable for monthly reports.

(c) These reports shall include the following:

(1) An itemized statement of the number of gallons of all motor fuel received during the next-preceding calendar month by the distributor, which has been produced, refined, prepared, distilled, manufactured, or compounded by the distributor in the State of Arkansas;

(2) An itemized statement of the number of gallons of all motor fuel received by the distributor in the State of Arkansas from any source whatsoever during the next-preceding calendar month as shown by the shipper's bills of lading thereof, other than motor fuel falling within the provisions of subdivision (1) of this subsection, together with a statement showing:

(A) The date of receipt of each shipment of motor fuel;

(B) The name of the person from whom purchased or received;

(C) The point of origin and the point of destination of each shipment;

(D) The quantity of each of the purchases or shipment;

(E) The name of the carrier;

(F) The number of each tank car or tank truck;

(G) The number of gallons contained in each tank car or tank truck; and

(H) The owner of the boat, ship, barge, or vessel, if shipped by water;

(3) An itemized statement of the number of gallons of motor fuel deducted in accordance with the provisions of § 26-55-230(a)(1)(C) or § 26-55-230(a)(1)(D) in making any previous monthly report with respect to which motor fuel so deducted the tax payable under the terms of this subchapter have not theretofore been paid;

(4) An itemized statement of the number of gallons of motor fuel sold by the distributor during the preceding calendar month and exempted from the tax by § 26-55-207(1)-(4), separately itemizing the amount of motor fuel sold and claimed to be exempt under each of the subdivisions (1)-(4) of § 26-55-207; and the statement shall furnish such information relating to such sales as shall be required by the director and reasonably necessary to the enforcement by the director of the provisions of this subchapter;

(5) An itemized statement of the number of gallons of motor fuel sold by the distributor within a border rate area and at the border rate tax, as is permitted by §§ 26-55-210 and 26-55-212, together with such information relating to such sales as shall be required by the director and reasonably necessary to the enforcement by the director of the provisions of this subchapter;

(6) An itemized statement of the number of gallons of motor fuel which, during the next-preceding month, was received, within the meaning of § 26-55-202(13)(A) or § 26-55-202(13)(B), by being placed in a tank, but which had not been withdrawn therefrom at the close of the next preceding calendar month;

(7) An itemized statement of the number of gallons of motor fuel received during the next-preceding calendar month and deductible under § 26-55-230(a)(1)(D); and

(8) An itemized statement of the number of gallons of motor fuel received by the distributor during the next-preceding calendar month which were purchased by the distributor, tax-paid, and supported by copies of the seller's tax-paid invoices.

History. Acts 1941, No. 383, § 10; 1943, No. 253, § 2; 1979, No. 802, § 1; A.S.A. 1947, § 75-1112; Acts 1987, No. 763, § 4; 1991, No. 688, § 1; 2009, No. 655, § 47.

Amendments. The 2009 amendment inserted "and" at the end of (c)(7), and made a minor stylistic change.

26-55-230. Computation and payment of tax.

(a) At the time of filing of each monthly report with the Director of the Department of Finance and Administration, each distributor shall pay to the director the full amount of the motor fuel tax for the next-preceding calendar month, which shall be computed as follows:

(1) From the sum of the total number of gallons of motor fuel received, reduced by the total number of gallons received upon which the tax has been paid as evidenced by the itemized statement filed pursuant to § 26-55-229(c)(8) by the distributor within the State of Arkansas during the next-preceding calendar month, plus the total number of gallons of motor fuel deducted on any previous monthly

report of the distributor under the provisions of subdivisions (a)(1)(C) and (D) of this section with respect to which the tax payable under this subchapter remains unpaid, shall be made the following deductions:

(A) The total number of gallons of motor fuel received by the distributor within the State of Arkansas and sold or otherwise disposed of during the next-preceding calendar month as set forth in § 26-55-207;

(B) The total number of gallons of motor fuel received by the distributor within the State of Arkansas and sold or otherwise disposed of during the next-preceding calendar month as set forth in § 26-55-210;

(C) The total number of gallons of motor fuel which, during any previous calendar month, was received, within the meaning of § 26-55-202(13)(A) or § 26-55-202(13)(B), by being placed in a tank but had not been withdrawn therefrom at the close of the next-preceding calendar month;

(D) The total number of gallons of motor fuel received during any previous calendar month, within the meaning of § 26-55-202(13)(A), by being placed in a tank, which was thereafter delivered by the person receiving it to a common carrier pipeline for shipment or delivery to a point in Arkansas, but had not been, at the close of the next-preceding calendar month, delivered by the pipeline at its destination, even though because of being mingled in the common carrier pipeline system with other motor fuel, the motor fuel to be delivered to the point of destination is not the identical motor fuel delivered by the shipper to the common carrier pipeline;

(E)(i) That number of gallons of motor fuel lost due to fire, flood, storm, theft, or other cause beyond the distributor's control, other than through evaporation.

(ii) The deduction for the loss may be included in the report filed for the month in which the loss occurred or in any subsequent report filed within a period of one (1) year; and

(F)(i) That number of gallons of motor fuel which shall be equal to three percent (3%) of the first one million gallons (1,000,000 gals.), and no allowance for the remaining gallons of the total number of gallons of motor fuel received by the distributor during the next-preceding calendar month, less the total number of gallons deducted under subdivisions (a)(1)(A)-(E) of this section.

(ii) It is determined by the General Assembly that three percent (3%) of the first one million gallons (1,000,000 gals.) and no allowance for the remaining gallons so received is the actual and average amount of loss resulting from evaporation, shrinkage, and the losses resulting from unknown causes irrespective of the amount thereof, and the cost of collection;

(2) The number of gallons remaining after the deductions set forth in subdivision (a)(1) of this section have been made shall be multiplied by the rate of tax under § 26-55-205; and

(3) The remaining number of gallons computed on a volumetric basis shall be multiplied by the rate provided by law in the adjoining state,

such rate not to exceed the rate provided by § 26-55-205, and the resulting figure, together with the figure obtained in subdivision (a)(2) of this section, shall be the total amount of motor fuel tax due for the next-preceding calendar month.

(b) In reporting and computing this tax, distributors shall adjust all volume measurements of motor fuel to a temperature of sixty degrees Fahrenheit (60° F).

(c) The director by regulation shall provide for the payment and collection of the motor fuel tax when it is due but which under the terms of this subchapter is not required to be remitted by a distributor.

History. Acts 1941, No. 383, § 10; 1943, No. 253, § 2; 1949, No. 352, § 1; 1965 (1st Ex. Sess.), No. 41, § 2; 1979, No. 686, § 1; A.S.A. 1947, § 75-1112; Acts 1987, No. 763, § 5; 1989, No. 821, § 10; 2009, No. 655, §§ 48, 49.

Amendments. The 2009 amendment inserted "and" at the end of (a)(1)(E)(ii) and (a)(2); substituted "set forth in subdivision (a)(1) of this section" for "hereinabove set forth" in (a)(2); and made a minor stylistic change.

26-55-232. Failure to report or pay taxes promptly — Penalties.

(a) When any distributor fails to file its monthly report with the Director of the Department of Finance and Administration on or before the time fixed in this subchapter for the filing thereof, when the distributor fails to submit the data outlined in §§ 26-55-229 and 26-55-230 in the monthly report, or when the distributor fails to pay to the director the amount of excise taxes due to the State of Arkansas when the excise taxes are payable, the distributor shall be subject to applicable penalty and interest provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(b)(1) If the excise tax is not paid within sixty (60) days after the date the excise tax is due, then the director shall suspend the license of the distributor.

(2)(A) When the director issues a notice of proposed assessment to the distributor under § 26-18-403, the director may notify the bonding company of the excise tax delinquency.

(B) At the end of the ten-day demand for payment period that begins on the date a final assessment is issued under § 26-18-401, the director shall notify the bonding company of the excise tax delinquency and declare the bond forfeited.

History. Acts 1941, No. 383, § 12; 1943, No. 255, § 1; 1957, No. 393, § 3; A.S.A. 1947, § 75-1114; Acts 2011, No. 788, § 3.

Amendments. The 2011 amendment rewrote the section.

26-55-233. [Repealed.]

Publisher's Notes. This section, concerning failure to file report — assessment and collection of tax, was repealed by Acts 2011, No. 788, § 4. The section was derived from Acts 1941, No. 383, § 13; 1967, No. 197, § 1; A.S.A. 1947, § 75-1115.

26-55-236. Failure to file reports, statements, or returns — Falsification — Penalties.

Upon conviction, a person who refuses or neglects to make any statement, report, or return required by this subchapter or who knowingly makes, aids, or assists another person in making a false statement in a return or report required by this subchapter to the Director of the Department of Finance and Administration is guilty of an unclassified misdemeanor and shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) or imprisonment for a term of not less than thirty (30) days and not more than one (1) year, or both fine and imprisonment.

History. Acts 1941, No. 383, § 25; A.S.A. 1947, § 75-1127; Acts 2009, No. 655, § 50.

Amendments. The 2009 amendment inserted "is guilty of an unclassified misdemeanor and," deleted "in the county jail" following "or imprisonment," and made related and minor stylistic changes.

26-55-237. [Repealed.]

Publisher's Notes. This section, concerning retention of records by distributors and dealers — penalty for noncompliance, was repealed by Acts 2011, No. 788, § 5. The section was derived from Acts 1941, No. 383, § 16; A.S.A. 1947, § 75-1118; Acts 2009, No. 655, § 51.

26-55-238. [Repealed.]

Publisher's Notes. This section, concerning inspection of records, books, etc. — examination of witnesses, was repealed by Acts 2011, No. 788, § 6. The section was derived from Acts 1941, No. 383, § 17; A.S.A. 1947, § 75-1119.

26-55-240. Discontinuance or transfer of business.

(a)(1) Whenever a distributor ceases to engage in business as a distributor within the State of Arkansas by reason of the discontinuance, sale, or transfer of the business of the distributor, it shall be the duty of the distributor to notify the Director of the Department of Finance and Administration in writing at least ten (10) days prior to the time the discontinuance, sale, or transfer takes effect.

(2) The notice shall give the date of discontinuance and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee.

(b)(1) All taxes, penalties, and interest under this subchapter, not yet due and payable under the provisions of this subchapter, together with any and all interest accruing or penalties imposed under this subchapter, notwithstanding any provisions thereof, shall become due and payable concurrently with the discontinuance, sale, or transfer.

(2) It shall be the duty of any such distributor concurrently with the discontinuance, sale, or transfer to make a report and pay all such taxes, interest, and penalties, and to surrender to the director the license certificate theretofore issued to the distributor by the director.

(c) Unless the notice provided for in subsection (a) of this section shall have been given to the director as provided in subsection (a) of this section, the purchaser or transferee shall be liable to the State of Arkansas for the amount of all taxes, penalties, and interest under this subchapter accrued against any such distributor selling or transferring the distributor's business, on the date of the sale or transfer but only to the extent of the value of the property and business acquired from the distributor.

(d) Upon conviction, a person violating this section is guilty of an unclassified misdemeanor and shall be sentenced to pay a fine of not less than fifty dollars ($50.00) nor more than three hundred dollars ($300) and costs of the prosecution or imprisonment for not more than one (1) year, or both.

History. Acts 1941, No. 383, § 19; A.S.A. 1947, § 75-1121; Acts 2009, No. 655, § 52.

Amendments. The 2009 amendment, in (d), inserted "Upon conviction" and "an unclassified"; and made related and minor stylistic changes.

26-55-241. Unpaid tax — Lien on property — Enforcement.

(a) If any person liable for the tax imposed by the provisions of this subchapter neglects or refuses to pay the tax, the amount of the tax, including any interest, penalty, or addition to the tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by the person whether the property is employed by the person in the prosecution of business or is in the hands of an assignee, trustee, or receiver for the benefit of creditors from the date the taxes are due and payable as provided in this subchapter.

(b)(1) The lien may be enforced by the Director of the Department of Finance and Administration by filing a certificate of indebtedness as provided for in § 26-18-701 or by any other legal means.

(2) The action of the director in attempting to collect the delinquent taxes by issuing the certificate of indebtedness shall not be construed to be an election of remedies.

History. Acts 1941, No. 383, § 18; A.S.A. 1947, § 75-1120; Acts 2011, No. 788, § 7.

Amendments. The 2011 amendment substituted "§ 26-18-701" for "§ 26-55-243" in (b)(1).

26-55-243. [Repealed.]

Publisher's Notes. This section, concerning delinquent tax payments — collection procedure, was repealed by Acts 2011, No. 788, § 8. The section was derived from Acts 1941, No. 383, § 20; A.S.A. 1947, § 75-1122.

26-55-244. [Repealed.]

Publisher's Notes. This section, concerning refunds on excess gallonage reported, was repealed by Acts 2011, No. 788, § 9. The section was derived from Acts 1941, No. 383, § 22; 1965 (1st Ex. Sess.), No. 41, § 3; A.S.A. 1947, § 75-1124.

26-55-245. Refunds — Taxes erroneously or illegally collected — Lost fuel.

(a) In the event it appears to the Director of the Department of Finance and Administration that any taxes or penalties imposed by this subchapter have been erroneously or illegally collected from any distributor, the director shall certify the amount thereof and authorize and permit the distributor to make an equivalent deduction from the distributor's next motor fuel tax payment to the State of Arkansas.

(b) In the event any distributor sustains a loss of motor fuel due to fire, flood, storm, theft, or other causes beyond the distributor's control other than through evaporation, which product has been received as defined by § 26-55-202(13), the director shall authorize and permit the distributor to deduct the quantity so lost from the quantity subject to tax on the motor fuel tax report filed for the month in which the loss occurred or any subsequent report filed within a period of one (1) year. However, the same loss may be allowed only one (1) time.

(c)(1) Before the director shall certify or authorize any distributor to make any deduction or take any credit on its reports on account of any tax having been erroneously or illegally collected or on account of any loss as provided in subsections (a) and (b) of this section, satisfactory evidence, upon such forms and in such a manner as shall be prescribed by the Revenue Division of the Department of Finance and Administration, shall be submitted to the supervisor of the Motor Fuel Tax Section of the Department of Finance and Administration, who shall determine from the evidence if any deduction or credit is to be allowed.

(2) Thereupon the supervisor of the section shall transmit to the director his or her certificate of approval, and the director may in his or her discretion allow the deduction or credit in the amount the director thinks proper or may reject the deduction or credit altogether.

(3) [Repealed.]

(4) The rejection or confirmation of the deduction or credit shall be final, and upon the confirmation by the director, the deduction or credit shall then be allowed in due course by the supervisor of the section.

History. Acts 1941, No. 383, § 23; 1943, No. 251, § 1; A.S.A. 1947, § 75-1125; Acts 2009, No. 655, § 53.

Amendments. The 2009 amendment deleted (c)(3).

26-55-248. Sale of fuels purchased from other than duly licensed distributor — Penalties.

A person who sells motor fuel purchased by him or her from any person other than a duly licensed distributor upon which the tax imposed by this subchapter has not been paid, upon conviction is guilty of an unclassified misdemeanor and shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) or imprisonment for a term of not less than thirty (30) days and not more than one (1) year, or both fine and imprisonment.

History. Acts 1941, No. 383, § 25; A.S.A. 1947, § 75-1127; Acts 2009, No. 655, § 54.

Amendments. The 2009 amendment inserted "is guilty of an unclassified misdemeanor and," deleted "in the county jail" following "or imprisonment," and made related and minor stylistic changes.

Subchapter 6 — Shipments of Motor Fuels

SECTION.

26-55-603. Penalties — Impoundment of vehicles.

(a) Upon conviction, a person transporting fuels into the State of Arkansas without the appropriate bill of lading and import/export load permit or interstate shipment record as required by this subchapter is guilty of a violation and shall be fined not more than two thousand five hundred dollars ($2,500), of which one-half (1/2) shall be deposited with the Treasurer of State as special highway revenues to be disbursed in the same manner and to be used for the same purposes set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

(b) Upon conviction, a person is guilty of a violation and subject to the penalty in subsection (a) of this section if the person:

(1) Makes or assists another person to make a false or fraudulent statement in any report required by this subchapter, the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq.;

(2) Fails to include any information demanded by this subchapter, the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq.; or

(3) Fails to produce upon request of proper authority any information required in this subchapter, the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq.

(c) Any motor vehicle, including the cargo thereof, found to have been in violation of any of the provisions of this section shall be impounded by the Director of State Highways and Transportation pending disposition under this subchapter.

History. Acts 1987, No. 977, § 8; 2009, No. 655, § 55.

Amendments. The 2009 amendment inserted "Upon conviction" in (a) and (b);

substituted "violation" for "misdemeanor" in (a); subdivided (b), inserted "is guilty of a violation and subject to the penalty in subsection (a) of this section" in the introductory language, deleted "shall be guilty of a misdemeanor and subject to the penalties as provided in this section" at the end of (b)(3), and made related and minor stylistic changes.

Subchapter 7 — Fuel Imported in Supply Tanks

26-55-702. Liability for tax.

Any person, firm, or corporation that operates on the highways of this state a motor carrier, bus, truck, transport, or other motor vehicle, having a gross loaded weight of twenty-six thousand one pounds (26,001 lbs.) or more and having motor fuel commonly or commercially sold and used as gasoline as defined in § 26-55-202 in its fuel tank or tanks upon which the Arkansas motor fuel tax has not been paid is liable for a tax at the rate per gallon under § 26-55-205 on all such gasoline used or consumed in the State of Arkansas, subject to § 26-55-710.

History. Acts 1953, No. 112, § 2; 1965 (1st Ex. Sess.), No. 41, § 4; 1967, No. 356, § 1; A.S.A. 1947, § 75-1150; Acts 1993, No. 618, § 8; 2009, No. 655, § 56.

Amendments. The 2009 amendment substituted "subject to § 26-55-710" for "subject to the provisions of §§ 26-55-710 and 26-55-715 [repealed]," and made minor stylistic changes.

26-55-712. Bonded and unbonded interstate users — Knowing failure to pay tax or penalty.

Upon conviction, a bonded or unbonded motor fuel user who knowingly fails to pay the Arkansas gallonage tax due the State of Arkansas on motor fuel used on the highways of this state as required in § 26-55-710 with respect to motor fuel taxes on Class C vehicles, or knowingly fails to pay the penalty on the motor fuel on which the Arkansas motor fuel tax has not been paid as required in § 26-55-711 is guilty of a Class A misdemeanor.

History. Acts 1977, No. 354, § 3; A.S.A. 1947, § 75-1187.2; Acts 2009, No. 655, § 57.

Amendments. The 2009 amendment deleted "and intentionally" following "knowingly" in two places, deleted "shall be punished in the manner provided by law" at the end, and made minor stylistic changes.

26-55-714. Interstate users — Tax refund procedure.

(a)(1) The Director of the Department of Finance and Administration shall quarterly determine the amount estimated to be necessary to pay refunds to interstate users of motor fuels who are entitled to refunds with respect to a portion of the motor fuel taxes paid in this state as authorized in § 26-55-710, and upon certification by the director, the Treasurer of State shall transfer from the gross amount of motor fuel taxes collected each month the amount so certified and shall credit it to the Interstate Motor Fuel Tax Refund Fund, which is established on the books of the State Treasury, from which the Department of Finance and Administration shall make refunds as provided by law.

(2) The transfers from the gross motor fuel taxes collected each month shall be after deducting allowances for bad checks or claims but before making any other distribution thereof as provided by law.

(b) All warrants drawn against the fund which are not presented for payment within one (1) year of issuance shall be void.

(c) Neither the director nor any member or employee of the department shall be held personally liable for making any refund by reason of a fraudulent claim being filed as a basis for that refund.

(d) The director is authorized to promulgate rules and regulations and to prescribe the necessary forms required for the administration of claims for tax refunds from interstate users of motor fuels in this state as authorized by law, which rules and regulations shall be in conformance with the following requirements:

(1) The director shall first determine with respect to each refund claim filed that the bond of the interstate user is adequate to compensate the State of Arkansas for any losses with respect to the recovery of any refunds illegally claimed by the interstate user, and the director may require the increase of the bond if the director determines it to be inadequate before approving any claim for refund;

(2) Each interstate user of motor fuels claiming refunds shall maintain adequate records to substantiate each claim for refund, and the director may reject any claim for refund if the director determines the applicant has not maintained adequate records or has not conformed to the rules and regulations of the department in filing the claim;

(3) Each claim for refund shall be upon the request of the interstate user, which shall be verified by the interstate user as to its accuracy and validity; and

(4)(A) Each quarterly report filed by a licensed interstate user of motor fuels with the department, shall reflect thereon the amount of motor fuels purchased for use in Arkansas during the quarter, the number of gallons of motor fuels upon which taxes are due the State of Arkansas for the quarter, and the excess gallonage upon which the interstate user is entitled to refunds.

(B) At the end of each calendar quarter, the licensed interstate user may make application for refund with respect to the number of gallons of motor fuels upon which the motor fuels taxes have been

paid during the calendar quarter for which the interstate user is entitled to refund.

History. Acts 1977, No. 51, §§ 2, 3; 1983, No. 830, § 3; A.S.A. 1947, §§ 75-1155.1, 75-1155.2; Acts 1987, No. 803, §§ 2-4; 2009, No. 655, § 58.

Amendments. The 2009 amendment inserted "and" at the end of (d)(3), and made a minor stylistic change.

26-55-718. Failure to file report or pay tax, filing fraudulent reports, etc. — Penalties.

(a) Upon conviction, a person who uses gasoline in this state and fails to pay the tax levied by this subchapter or any person who makes a false or fraudulent report under this subchapter or who otherwise violates this subchapter is guilty of an unclassified misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or by imprisonment for not more than one (1) year, or by both fine and imprisonment.

(b) Each separate day of violation is a separate offense.

History. Acts 1953, No. 112, § 10; 1957, No. 213, § 4; A.S.A. 1947, § 75-1158; Acts 2009, No. 655, § 59.

Amendments. The 2009 amendment rewrote the section.

Subchapter 8 — Unlicensed Out-of-State Trucks

SECTION.

26-55-804. Payment of tax.

The tax shall be paid by the owner or operator of the truck or vehicle in either of the following ways, at the option of the owner or operator:

(1)(A) By the purchase of a sufficient amount or quantity of fuel from a retail dealer within the State of Arkansas to propel the vehicle the number of miles which the vehicle travels upon the highways of this state.

(B) At the time of the purchase of the fuel, the owner or operator of such vehicle shall obtain from the dealer from whom purchased an invoice or sales ticket, or forms approved by the Director of the Department of Finance and Administration, which shall contain the name and address of the seller of the fuel, the name and address of the purchaser, the date of purchase, the amount or quantity and kind of fuel purchased, and the invoice or sales ticket shall remain in the vehicle for the remainder of the trip over the highways of this state.

(C) The invoice or sales ticket shall be preserved and retained by the owner or operator for not less than three (3) years and shall be produced for the inspection and examination of the director or his or her authorized agent or employee at any reasonable time and place, either inside or outside this state, upon proper demand for the invoice or sales ticket; or

(2)(A) By the payment of the amount of tax which would be due upon a sufficient quantity of fuel to propel the vehicle over the highways of this state to the director or to his or her agent, representative, or employee.

(B) At the time of payment of the tax, the director or his or her employee or representative shall issue to the person paying the tax a receipt showing the amount of tax paid, the name and address of the owner or operator of the vehicle, a description of the vehicle, including the license number and state of registration, the point at which the vehicle entered upon the highways of this state, the destination and the place where the vehicle is to leave the highways of this state, and any other information which the director may require, which receipt shall be signed by the director or his or her agent or representative.

(C) The receipt shall remain in the vehicle for the remainder of the trip over the highways of this state and thereafter shall be preserved and retained by the owner or operator for a period of not less than three (3) years, and shall be produced for the inspection of the director or his or her authorized agent or representative, at any reasonable time and place either within or without this state upon proper demand.

History. Acts 1965, No. 573, § 1; A.S.A. 1947, § 75-1172; Acts 2009, No. 655, § 60.

Amendments. The 2009 amendment substituted "for the invoice or sales ticket" for "therefor" in (1)(C), and made minor stylistic and punctuation changes.

Subchapter 9 — Vehicle Tank Inspections

SECTION.

26-55-903. Rules and regulations.

(a) The Director of the State Plant Board shall have the power to adopt and, from time to time, to change by addition, amendment, or repeal reasonable rules and regulations consistent with law, for the enforcement of the provisions of this subchapter.

(b) The rules and regulations to the extent practicable shall be consistent with pertinent nationally recognized standards, methods, and tolerances.

(c) The regulations shall be applicable only to the extent that they are not in conflict with regulations or orders issued by an agency of the United States and shall be drawn with due consideration for the desirability of uniformity of the laws of the several states and the United States.

(d)(1) The rules promulgated under this subchapter and any addition to or amendment or repeal of the rules shall be adopted, changed, amended, or repealed only after full public hearing, which shall be adjourned from time to time as necessary to permit all interested or affected parties to be heard.

(2) At least thirty (30) days' prior written notice of the commencement of the hearing shall be published two (2) times in one (1) newspaper of general circulation that has been designated for that purpose by the director.

(3) The notice shall state the time, place, and purpose of the hearing and shall either set forth in full the rule to be considered or shall state where and how the full text may be obtained.

(4) A copy of the notice shall be sent at the same time to every person who has registered with the director a request to be so notified, together with the name and address to which the notice should be sent.

(5) Any rule or amendment or repeal of a rule shall be effective sixty (60) days after copies have been filed according to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1955, No. 50, §§ 3, 4; A.S.A. 1947, §§ 75-1161, 75-1162; Acts 2009, No. 655, § 61.

Amendments. The 2009 amendment, in (d), deleted "or regulations" following "rules" in three places; in (d)(5), deleted "certified" preceding "copies" and substituted "according to the Arkansas Administrative Procedure Act, § 25-15-201 et seq." for "as required by Acts 1953, No. 183 [repealed]"; and made minor stylistic and punctuation changes.

Subchapter 10 — Additional Taxes and Fees

SECTION.

26-55-1006. Excise tax rates.

(a) In addition to the taxes levied on motor fuel in §§ 26-55-205, 26-55-1002, and 26-55-1201, there is levied an additional excise tax of three cents (3¢) per gallon on all motor fuels subject to the taxes levied in §§ 26-55-205, 26-55-1002, and 26-55-1201.

(b) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of the other motor fuel taxes under Arkansas law.

(c) The additional tax levied by this section shall be taken into consideration and used when calculating tax credits or additional tax due under § 26-55-710.

(d) The additional taxes collected pursuant to this section shall be considered special revenues and shall be distributed as set forth in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

History. Acts 1999, No. 1028, §§ 3, 4; 2005, No. 685, § 3; 2009, No. 655, § 62.

Amendments. The 2009 amendment, in (a), deleted (a)(2) and (a)(3), redesignated the remaining subdivision accordingly, deleted "On and after July 1, 1999" at the beginning, substituted "three cents (3¢)" for "one cent (1¢)," and made related and minor stylistic changes.

CHAPTER 56

SPECIAL MOTOR FUELS TAXES

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

26-56-106. [Repealed.]

Publisher's Notes. This section, concerning failure, refusal, etc., to make report or pay tax — penalties, interest — attorney's fees, was repealed by Acts 2011, No. 788, § 10. The section was derived from Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 3; 1967, No. 199, § 1; A.S.A. 1947, § 75-1268; Acts 1991, No. 688, § 4.

26-56-107. False or fraudulent reports — Fraudulent avoidance of tax — Penalty.

Upon conviction, a person who makes a false or fraudulent report under this chapter or who fraudulently attempts to avoid the payment of the tax levied in this chapter on any distillate special fuel or liquefied gas special fuels is guilty of an unclassified misdemeanor and shall be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000) or by imprisonment for not less than thirty (30) days nor more than six (6) months, or both fined and imprisoned.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 3; 1967, No. 199, § 1; A.S.A. 1947, § 75-1268; Acts 2009, No. 655, § 63.

Amendments. The 2009 amendment inserted "an unclassified," and made minor stylistic changes.

26-56-108. [Repealed.]

Publisher's Notes. This section, concerning assessment of delinquent tax — time limitations, was repealed by Acts 2011, No. 788, § 11. The section was derived from Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 3; 1967, No. 199, § 1; A.S.A. 1947, § 75-1268.

Subchapter 2 — Distillate Special Fuels

SECTION.

Effective Dates. Acts 2011, No. 1058, § 6: July 1, 2012.

26-56-201. Imposition of tax — Exemptions.

(a)(1)(A)(i) There is levied an excise tax at the rate of eight and one-half cents (8½¢) per gallon on all distillate special fuel sold or used in this state or purchased for sale or use in this state.

(ii) In addition to the tax levied in subdivision (a)(1)(A)(i) of this section, there is levied an excise tax at the rate of one cent (1¢) per gallon on all distillate special fuel sold or used in this state or purchased for sale or use in this state.

(B) The additional levies provided in subdivision (a)(2) of this section and § 26-56-502 are specifically intended to apply to the taxes levied by this section and shall remain effective.

(2) In addition to the tax levied in subdivision (a)(1) of this section, there is levied an excise tax of one cent (1¢) for each gallon of distillate special fuel, as defined in § 26-56-102, sold or used in this state, or purchased for sale or use in this state, to be computed in the manner set forth in this section.

(b) The following are exempted from the tax levied by subsection (a) of this section:

(1) Sales to the United States Government;

(2) Sales to dealers, users, or off-road consumers for off-road use only if the distillate special fuel was delivered by the supplier into storage facilities clearly marked "NOT FOR MOTOR VEHICLE USE";

(3) Sales of distillate special fuel by a licensed supplier for export from the State of Arkansas when shipped by common carrier f.o.b. destination to any other state or territory or to any foreign country, or the export of distillate special fuel by a licensed supplier from the State of Arkansas to any other state or territory or to any foreign country, if satisfactory proof of actual exportation of all such distillate special fuel is furnished at the time and in the manner prescribed by the Director of the Department of Finance and Administration;

(4) Sales of distillate special fuel by a pipeline importer who has first received the distillate special fuel in this state or to a licensed first receiver in this state;

(5) [Repealed]; and

(6) Sales of distillate special fuel utilized in propelling jet aircrafts.

(c) A licensed first receiver shall not sell untaxed distillate special fuel to another licensed first receiver or pipeline importer, unless a specific exemption is available under subsection (b) of this section.

(d)(1) In addition to the taxes levied on distillate special fuel in this section and § 26-56-502, there is levied an additional excise tax of four cents (4¢) per gallon upon all distillate special fuel subject to the taxes levied in this section and § 26-56-502.

(2) This additional excise tax shall be levied, collected, reported, and paid in the same manner and at the same time as is prescribed by law for the levying, collection, reporting, and payment of the other distillate special fuel taxes under Arkansas law.

(e)(1)(A) In addition to the taxes levied on distillate special fuel in this section and §§ 26-56-502 and 26-56-601, there is levied an excise tax of two cents (2¢) per gallon upon all distillate special fuel subject to the taxes levied in this section and §§ 26-56-502 and 26-56-601.

(B) Effective one (1) year after April 1, 1999, the additional tax levied by this subsection shall be increased by an additional two cents (2¢) per gallon.

(2) This additional excise tax shall be levied, collected, reported, and paid in the same manner and at the same time as is prescribed by law for the levying, collection, reporting, and payment of the other distillate special fuel taxes under Arkansas law.

(3) The additional tax levied by this subsection shall be taken into consideration and used when calculating tax credits or additional tax due under § 26-56-214.

(f) Except as provided in subsection (g) of this section, the additional taxes collected under this section are special revenues and shall be distributed as set forth in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., subject to any requirements for the repayment of bonds issued under the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., the Arkansas Interstate Highway Financing Act of 2007, § 27-64-401 et seq., and the Arkansas Highway Financing Act of 2011, § 27-64-501 et seq.

(g)(1) In order to offset the general revenues lost by the tax exemption contained in § 26-52-436(c) and (d) and § 26-53-144(c) and (d), the Chief Fiscal Officer of the State shall, on or before June 30, 2013, and on or before June 30 of each fiscal year thereafter, deposit the first four million dollars ($4,000,000) of the taxes collected under subdivision (a)(1)(A)(i) of this section as general revenues, to be distributed as follows:

(A) Seventy-five percent (75%) to be deposited into the General Revenue Fund Account of the State Apportionment Fund, § 19-5-202;

(B) Fourteen and six-tenths percent (14.6%) to be deposited into the Educational Adequacy Fund, § 19-5-1227;

(C) Eight and three-tenths percent (8.3%) to be deposited into the Property Tax Relief Trust Fund, § 19-5-1103; and

(D) Two and one-tenth percent (2.1%) to be deposited into the Conservation Tax Fund, § 19-6-484.

(2) The balance of the taxes collected under subdivision (a)(1)(A)(i) of this section shall be deposited as special revenues and distributed in the manner required by law.

(3) The classification and distribution of taxes under subdivision (g)(1) of this section is subject to any requirements for the repayment of bonds issued under the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., and the Arkansas Interstate Highway Financing Act of 2007, § 27-64-401 et seq.

(4) The taxes collected under subdivision (a)(1)(A)(ii) of this section shall be distributed as provided in § 26-56-221.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 1; 1967, No. 357, § 1; 1973, No. 445, § 1; 1979, No. 437, § 2; A.S.A. 1947, §§ 75-1241, 75-1269; Acts 1987, No. 985, §§ 6, 7; 1987 (1st Ex. Sess.), No. 20, §§ 1, 4-6; 1989, No. 821, § 10; 1991, No. 219, § 3; 1993, No. 618, §§ 2, 3; 1997, No. 1212, § 3; 1999, No. 1028, §§ 2, 4; 2005, No. 685, § 2; 2007, No. 511, § 2; 2011, No. 773, § 1; 2011, No. 788, § 12; 2011, No. 1058, § 5.

Amendments. The 2011 amendment by No. 773 added "and the Arkansas Highway Financing Act of 2011, § 27-64-501 et seq." at the end of (f).

The 2011 amendment by No. 788 deleted (b)(5).

The 2011 amendment by No. 1058, in (a)(1)(A)(i), substituted "eight and one-half cents (8½¢)" for "nine and one-half cents (9½¢)" and deleted "except fuel utilized in propelling jet aircraft" following "special fuel"; inserted (a)(1)(A)(ii) and (b)(6); added the exception at the beginning of (f); and added (g).

Effective Dates. Acts 2011, No. 1058, § 6: July 1, 2012.

26-56-202. Collection and payment of tax.

(a) The tax levied by this subchapter shall be collected and paid by suppliers.

(b) The tax levied by this subchapter shall be paid by an interstate user on distillate special fuel imported into this state by the interstate user under § 26-56-214.

(c) The tax levied by this subchapter shall be paid by any person who uses distillate special fuel in this state on which the tax levied in this subchapter has not been paid according to § 26-56-214.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 3; 1967, No. 138, § 1; 1967, No. 357, § 8; A.S.A. 1947, § 75-1243; Acts 1987, No. 985, § 9; 2009, No. 655, § 64.

Amendments. The 2009 amendment deleted "§ 26-56-211 [repealed] and" preceding "§ 26-56-214" in (b) and (c); and made minor stylistic changes.

26-56-206. Dealers' licenses and bonds — Municipal taxes.

Section 26-56-204 does not prevent the collection of any privilege or occupation taxes by any municipality of this state for engaging in the business of a dealer within the limits of the municipality.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 7; 1967, No. 357, § 3; A.S.A. 1947, § 75-1247; Acts 2009, No. 655, § 65.

Amendments. The 2009 amendment substituted "Section 26-56-204 does not prevent" for "Nothing in §§ 26-56-204 and 26-56-205 [repealed] shall be construed so as to prevent."

26-56-210. [Repealed.]

Publisher's Notes. This section, concerning prima facie presumptions — failure to keep records, issue invoices, or file reports — tax, penalties, and interest, was repealed by Acts 2011, No. 788, § 13. The section was derived from Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 10; A.S.A. 1947, § 75-1250.

26-56-213. Bonded and unbonded users — Knowing failure to pay tax or penalty.

Upon conviction, a bonded or unbonded distillate special fuel user is guilty of a Class A misdemeanor if the bonded or unbonded distillate special fuel user knowingly fails to pay the:

(1) Arkansas gallonage tax due the State of Arkansas on motor fuel and distillate special fuel used on the highways of this state as required in § 26-56-214 with respect to distillate special fuel tax used on Class B vehicles; or

(2) Penalty on the fuel on which the Arkansas distillate special fuel tax has not been paid, as required in § 26-56-214.

History. Acts 1977, No. 354, § 3; A.S.A. 1947, § 75-1187.2; Acts 2009, No. 655, § 66.

Amendments. The 2009 amendment subdivided the section; in the introductory language, inserted "Upon conviction" and "is guilty of a Class A misdemeanor," and deleted "and intentionally" following "knowingly"; deleted "shall be guilty of a Class A misdemeanor and upon conviction shall be punished in the manner provided by law" at the end of (2); and made related and minor stylistic changes.

26-56-215. Interstate users — Tax refund procedure.

(a)(1) The Director of the Department of Finance and Administration shall quarterly estimate the amount necessary to pay refunds to interstate users of special motor fuels who are entitled to refunds with respect to special motor fuel taxes paid in this state as authorized in § 26-56-214, and upon certification by the director, the Treasurer of State shall transfer from the gross amount of special motor fuel taxes collected each month the amount so certified and shall credit the amount to the Interstate Motor Fuel Tax Refund Fund, which is established on the books of the State Treasury, from which the Department of Finance and Administration shall make refunds as provided by law.

(2) The transfers from the gross motor fuel taxes and special motor fuel taxes collected each month shall be after deducting allowances for bad checks or claims but before making any other distribution as provided by law.

(b) All warrants drawn against the fund which are not presented for payment within one (1) year of issuance shall be void.

(c) Neither the director nor any member or employee of the department shall be held personally liable for making any refund by reason of a fraudulent claim being filed as a basis for such refund.

(d) The director is authorized to promulgate rules and regulations and to prescribe the necessary forms required for the administration of claims for tax refunds from interstate users of special motor fuels in this state as authorized by law, which rules and regulations shall be in conformance with the following requirements:

(1) The director shall first determine, with respect to each refund claim filed, that the bond of the interstate user is adequate to compensate the State of Arkansas for any losses with respect to the recovery of any refunds illegally claimed by the interstate user, and the director may require the increase of the bond if the director determines it to be inadequate before approving any such claim for refund;

(2) Each interstate user of motor fuels and special motor fuels claiming refunds shall maintain adequate records to substantiate each claim for refund, and the director may reject any claim for refund if the director determines the applicant has not maintained adequate records or has not conformed to the rules and regulations of the department in filing the claim therefor;

(3) Each claim for refund shall be upon the request of the interstate user, which shall be verified by the interstate user as to its accuracy and validity; and

(4)(A) Each quarterly report filed by a licensed interstate user of special motor fuels with the department shall reflect thereon the amount of special motor fuels purchased for use in Arkansas during the quarter, the number of gallons of special motor fuels upon which taxes are due the State of Arkansas for the quarter, and the excess gallonage upon which the interstate user is entitled to refunds.

(B) At the end of each calendar quarter, the licensed interstate user may make application for refund with respect to the number of gallons of special motor fuels upon which the special motor fuels taxes have been paid during the calendar quarter for which the interstate user is entitled to refund.

History. Acts 1977, No. 51, §§ 2, 3; 1983, No. 830, § 3; A.S.A. 1947, §§ 75-1155.1, 75-1155.2; Acts 1987, No. 803, §§ 2-4; 2009, No. 655, § 67.

Amendments. The 2009 amendment inserted "and" at the end of (d)(3), and made a minor stylistic change.

26-56-221. Distribution of taxes.

(a) Taxes from the one cent (1¢) additional tax levied on distillate special fuel in § 26-56-201(a)(1)(A) resulting from Acts 1979, No. 437, § 2, shall be remitted to the Treasurer of State separate from other distillate special fuel taxes.

(b) The gross amount of the taxes described in subsection (a) of this section shall be distributed under the Arkansas Highway Revenue Distribution Law, §§ 27-70-201 — 27-70-203, 27-70-206, and 27-70-207, without making any deduction for credit to the Constitutional Officers Fund and the State Central Services Fund.

History. Acts 1979, No. 437, § 3; A.S.A. 1947, § 75-1241.1; Acts 2009, No. 655, § 68; 2011, No. 983, § 16.

Amendments. The 2009 amendment rewrote the section.

The 2011 amendment substituted "additional" for "of the" in (a).

Subchapter 3 — Liquefied Gas

SECTION.

26-56-304. Users' permits generally.

(a) Each liquefied gas special fuels user, including licensed liquefied gas special fuels suppliers and dealers who use liquefied gas special fuels in vehicles owned by the supplier or dealer, shall make application for and secure a liquefied gas special fuels user's permit for each vehicle owned and operated which uses liquefied gas special fuels.

(b) The application must be made on a form prescribed by the Director of the Department of Finance and Administration, showing the name, address, and user license number or supplier or dealer license number of the applicant, the make, model, and motor number of the vehicle involved, the type of fuel used therein, and such other pertinent information as the director may require.

(c) The fuel user's permit shall be obtained annually before the director shall register and issue a motor vehicle license for the vehicle.

(d)(1) At the time of applying for such permit and prior to the registration and issuance of a motor vehicle license for the vehicle, each applicant except licensed liquefied gas special fuels suppliers shall remit to the director, in addition to the regular fee prescribed by law for the registration and licensing of the vehicle, an additional fee in an amount which is determined by the General Assembly, based upon information available from statistical studies of the motor vehicular use of liquefied gas special fuels by various classes of users, as follows:

Nonfarm Vehicles

	Annual Additional Fee
Passenger cars and motor homes	$ 164.00
Pickup trucks, one-half (½) and three-quarter (¾) ton	195.00
Pickup trucks, one (1) ton	251.00
Trucks, maximum gross loaded weight in excess of one (1) ton but not exceeding 22,500 pounds	520.00
Passenger buses except school buses manufactured and licensed as such	520.00
School buses manufactured and licensed as such	260.00
Trucks, maximum gross loaded weight in excess of 22,500 pounds	609.00

Farm Vehicles

In order to aid in the production of farm products and to eliminate apparent inequities in liquefied gas special fuels fees which are in lieu of the gallonage tax on such fuel used in vehicles operated primarily on farms and not on the main highway system of this state, a special classification is created for farm vehicles using liquefied gas special fuels and entitled to be registered and licensed as natural resources farm vehicles. The flat fee in lieu of the gallonage tax on the fuel used in such vehicle shall be as follows:

Pickup trucks, one-half (½) and three-quarter (¾) ton	$ 130.00
Pickup trucks, one (1) ton	156.00
Trucks, maximum gross loaded weight in excess of one (1) ton but not exceeding 22,500 pounds	178.00
Trucks, maximum gross loaded weight in excess of 22,500 pounds	260.00

(2) If the director determines that the flat fee provided herein in lieu of the gallonage tax on liquefied gas special fuels is, in the case of common or contract carriers or other vehicles for hire, inadequate to compensate for the gallonage tax, the director may require such common or contract carriers or owners of other vehicles for hire to pay a fee based upon the actual mileage of the common or contract carrier or vehicle for hire for the previous year, the current year, or any other reasonable basis.

(3) The director shall establish regulations for computing the fees and for the enforcement of the collection thereof.

(4) If any new liquefied gas special fuels vehicle is placed in operation or any other vehicle shall be converted to a liquefied gas special fuels vehicle during the registration year, the owner shall be permitted to pay a proportionate part of the liquefied gas special fuels user's permit fee for such vehicle for the remainder of the current registration year based upon one-twelfth (1/12) of the annual fee for such vehicle for each calendar month or fraction thereof remaining in the current registration year.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 3; 1967, No. 316, § 1; 1981, No. 789, § 1; A.S.A. 1947, § 75-1256; Acts 1991, No. 364, § 4; 1991, No. 382, § 4.

Publisher's Notes. This section is being reprinted in the supplement to correct an error in the dollar amount in the table in (d)(1).

Subchapter 8 — Additional Tax on Distillate Special Fuel

26-56-801. Definition.

As used in this subchapter, "distillate special fuel" means distillate special fuel as defined in § 26-56-102(6), except that distillate special fuel for purposes of the tax levied by this subchapter shall exclude distillate special fuel not intended for highway use, as defined by federal regulations on January 1, 2011, and for agricultural purposes.

History. Acts 2011, No. 773, § 2.

26-56-802. Additional tax on distillate special fuel.

(a)(1) In addition to all other taxes levied upon distillate special fuel, there is levied an additional tax on distillate special fuel of five cents (5¢) for each gallon of distillate special fuel sold or used in this state or purchased for sale or use in this state.

(2) The additional tax on distillate special fuel applies only to distillate special fuel intended for highway use or to fuel a motor vehicle intended for highway use.

(b) The additional distillate special fuel tax under this section is subject to the exemptions under this chapter.

(c)(1) The levy of the additional tax on distillate special fuel by subdivision (a)(1) of this section is conditioned upon the approval by a majority of the qualified electors of the state voting on the measure providing for the levy of the additional tax on distillate special fuel and the issuance of bonds in a statewide election held under the provisions of the Arkansas Highway Financing Act of 2011, § 27-64-501 et seq.

(2) If the levy of the additional tax on distillate special fuel and the issuance of the bonds is approved, the:

(A) Effective date of the additional tax on distillate special fuel levied by subdivision (a)(1) of this section shall be the first day of the second month following the month in which the Secretary of State certifies the vote of the voters of the state approving the levy of the additional tax on distillate special fuel and the issuance of bonds; and

(B) Additional tax on distillate special fuel levied by subdivision (a)(1) of this section shall terminate and shall no longer be collected upon certification by the Chair of the State Highway Commission that the bonds issued under the Arkansas Highway Finance Act of 2011, § 27-64-501 et seq. have been paid in full and all obligations of the commission with respect to such bonds have been performed in full.

(3) If the levy of the additional tax on distillate special fuel and the issuance of the bonds are not approved, the levy of the additional tax on distillate special fuel by subdivision (a)(1) of this section shall terminate and the additional tax shall not be collected.

History. Acts 2011, No. 773, § 2.

26-56-803. Administration.

The tax on distillate special fuel levied by this subchapter shall be administered in accordance with the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 2011, No. 773, § 2.

26-56-804. Disposition.

The tax imposed by this subchapter is levied to provide revenue to be used by the state to defray, in whole or in part, the cost of constructing, widening, reconstructing, maintaining, resurfacing, and repairing the public highways of this state and shall be distributed as set forth in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq. subject to any requirements for the repayment of bonds issued under the Arkansas Highway Financing Act of 2011, § 27-64-501 et seq.

History. Acts 2011, No. 773, § 2.

CHAPTER 57

STATE PRIVILEGE TAXES

SUBCHAPTER.

Subchapter 2 — Arkansas Tobacco Products Tax Act of 1977

SECTION.

Effective Dates. Acts 2009, No. 180, § 6: Mar. 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that existing funding levels are inadequate to meet the medical care needs of the state. That without immediately obtaining adequate funding levels for medical care the citizens of this state will suffer irreparable harm to their health and well-being. This bill shall immediately provide additional funding that is needed to make the funding level adequate and humane. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on March 1, 2009."

Acts 2009, No. 542, § 2: Mar. 24, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that stamp deputies are required to furnish a bond; that the bond requirement allows cigarette wholesalers to make purchases on open account; that the bond requirement is in need of clarification to ensure that the original legislative intent is fulfilled; and that this act is immediately necessary to prevent possible confusion. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor

vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 940, § 5: Apr. 6, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the tax on cigarettes has been drastically increased; that the increase went into effect on March 1, 2009; that there are cities that adjoin border cities that are separated by a river from a city in an adjoining state; that these border cities are able to sell cigarettes at the rate of the adjoining state; and that this creates a drastic loss in cigarette sales for the cities that adjoin these border cities. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 510, § 5: Oct. 1, 2013. Effective date clause provided: "Sections 1 through 4 of this act are effective on the first day of the second calendar month following the effective date of this act."

Acts 2013, No. 631, § 11: Emergency clause failed. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that it is the intent of the General Assembly to clarify that each excise tax on tobacco products levied under current law is applicable to all tobacco products offered for sale within the State of Arkansas; that revenues from excise taxes under current law on all tobacco products offered for sale within the state are vital to protect the health and welfare of the citizens of this state; and that this act is immediately necessary to ensure and maintain the efficient administration and collection of revenues levied under current law on tobacco products sold within the state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1272, § 3: Sept. 1, 2013. Effective date clause provided: "This act shall be effective on and after September 1, 2013."

26-57-203. Definitions.

As used in this subchapter:

(1) "Annual" or "annually" means the fiscal year from July 1 through the next June 30;

(2) "Brand family" means the same as defined in § 26-57-1302;

(3) "Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, other than any roll of tobacco that is a cigarette;

(4) "Cigarette" means a cigarette as defined in § 26-57-260 that is subject to federal excise tax;

(5) "Cigarette inputs" means machinery or other component parts typically used in the manufacture of cigarettes, including without limitation tobacco, whether processed or unprocessed, cigarette papers and tubes, cigarette filters and component parts intended for use in the making of cigarette filters, and machinery typically used in the making of cigarettes;

(6) "Cigarette rolling machine" means a machine, device, or other type of equipment that is intended to be used or may be used to make rolled tobacco, or a substitute for rolled tobacco, for smoking from other tobacco products, including without limitation roll-your-own tobacco and pipe tobacco;

(7) "Consumer" means a member of the public at large;

(8) "Dealer's License" means a license for an entity that:

(A) Represents cigarette or tobacco manufacturers for the purpose of promoting the manufacturers' products in the State of Arkansas; and

(B) May have manufacturer representative permits issued to its sales representatives;

(9) "Directory" means:

(A) The directory compiled by the Attorney General under § 26-57-1303, if the reference is to the directory used in Arkansas; or

(B) The directory compiled under the law in another state, if the reference is to another state's directory;

(10) "First sale" means the sale of tobacco products made by a manufacturer to licensed wholesalers and licensed vendors or a licensed retailer;

(11)(A) "General tobacco products vendor" means a person that:

(i) Operates a vending machine or that uses another mechanical device from which cigarettes or other tobacco products are delivered to the consumer by inserting coins into the machine or device; and

(ii) Purchases tobacco products only from licensed wholesalers.

(B) A general tobacco products vendor may operate licensed vending machines on the general tobacco product vendor's own premises and on the premises of others as a principal business;

(12) "Gross sales" means the amount received for tobacco products sold at retail, including both the federal and state taxes of the tobacco products when purchased by a retailer;

(13)(A) "Importer" means a person:

(i) That is the first person in the United States to which non-tax paid cigarettes manufactured in a foreign country are shipped or consigned;

(ii) That removes cigarettes for sale or consumption in the United States from a customs-bonded manufacturing warehouse; or

(iii) That smuggles or otherwise unlawfully brings cigarettes into the United States.

(B) "Importer" includes a sales entity affiliate of the importer;

(14) "Invoice price" means the price that a wholesaler or retailer of tobacco products pays to a manufacturer, importer, or distributor for tobacco products that the wholesaler or retailer subsequently sells in the state;

(15) "Knowing" means, with respect to a violation or failure, a violation or failure in which the person knowingly engages in conduct without a good faith belief that the conduct is consistent with this subchapter;

(16) "Licensed" means that the person has received a license or permit from the Director of Arkansas Tobacco Control and is otherwise qualified to do business in this state;

(17)(A) "Manufacturer" means a person that produces or offers a tobacco product for sale, including without limitation federally licensed importers and distributors that deal in tobacco products as manufacturers and that are required under this subchapter to sell only to licensed wholesalers or licensed retailers located in the state.

(B) "Manufacturer" includes a sales entity affiliate of the manufacturer;

(18) "Nonparticipating manufacturer" means the same as defined in § 26-57-1302;

(19)(A) "Package" means a pack or other container on which a stamp could be applied consistent with and as required by this subchapter that contains one (1) or more individual cigarettes for sale.

(B) "Package" does not include a container of multiple packages;

(20) "Participating manufacturer" means the same as defined in § 26-57-1302;

(21) "Person" means an individual, retailer, wholesaler, manufacturer, firm, association, company, partnership, limited liability company, corporation, joint-stock company, club, agency, syndicate, the State of Arkansas, county, municipal corporation or other political subdivision of the state, receiver, trustee, fiduciary, or trade association;

(22) "Place of business" means the place where orders are taken or received or where tobacco products are sold;

(23) "Purchase" means an acquisition in any manner or by any means for any consideration, including without limitation transporting or receiving product in connection with a purchase;

(24) "Restricted tobacco products vendor" means a person that is licensed to operate vending machines owned by the person only on the person's own premises and is otherwise subject to all other restrictions imposed on a general tobacco products vendor;

(25) "Retailer" means a person that purchases tobacco products from licensed wholesalers for the purpose of selling the tobacco products over the counter at retail to consumers;

(26)(A) "Sale" or "sell" means a transfer, exchange, or barter in any manner or by any means for any consideration, including distributing or shipping product in connection with a sale.

(B) A sale "in" or "into" a state refers to the state in which the destination point of the product is located in the sale without regard to where title was transferred.

(C) A sale "from" a state refers to the sale of cigarettes that are located in that state to the destination in question without regard to where title was transferred;

(27)(A) "Sales entity affiliate" means an entity that:

(i) Sells cigarettes or other tobacco products that the entity acquires directly from a manufacturer or importer; and

(ii) Is affiliated with the manufacturer or importer from which the entity acquires the cigarettes or other tobacco products.

(B) "Sales entity affiliate" includes entities in a relationship in which one (1) entity directly or indirectly through one (1) or more intermediaries controls, is controlled by, or is under common control with the other entity;

(28) "Salesperson" means the agent or employee of a wholesaler that sells or offers for sale to licensed wholesalers or licensed retailers or that solicits for sale, takes orders for, or in any manner promotes the sale or use of tobacco products;

(29(A) "Stamps" means the Arkansas cigarette stamps denoting the tax on cigarettes.

(B) When affixed to a container of cigarettes, the stamps indicate that the tax has been paid;

(30) "Tobacco products" means all products containing tobacco for consumption, including without limitation cigarettes, cigars, little cigars, cigarillos, chewing tobacco, smokeless tobacco, snuff, smoking tobacco, including pipe tobacco, and smoking tobacco substitutes;

(31) "Tobacco products vending machine" means a vending machine from which tobacco products are sold;

(32) "Unstamped cigarettes" means cigarettes that are not contained in a package bearing a stamp permitted under this chapter;

(33) "Warehouse" means a place where tobacco products are stored for another person and to or from which place the tobacco products are shipped or delivered upon order by the owner of the tobacco products to the warehouse; and

(34) "Wholesaler" means a person other than a manufacturer or a person owned or operated by a manufacturer that:

(A) Does business within the state at or from an established place of business that purchases unstamped or untaxed cigarettes or other tobacco products directly from manufacturers that distribute tobacco products in the state; and

(B) Sells to properly licensed cigarette vendors or retailers.

History. Acts 1977, No. 546, § 2; 1979, No. 911, §§ 1-4; 1983, No. 255, § 2; A.S.A. 1947, § 84-4502; Acts 1987, No. 628, § 1; 1995, No. 1160, § 30; 1997, No. 1337, § 1; 2005, No. 1376, § 1; 2007, No. 827, §§ 227–229; 2009, No. 785, § 7; 2011, No. 836, § 2; 2013, No. 631, §§ 1–5; 2013, No. 1273, §§ 4–7.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (8).

The 2011 amendment deleted former (3); inserted present (2), (4) through (6), (8), (9), (13), (14), (17) through (19), (22), (25), (26), and (31); and redesignated the remaining subdivisions accordingly.

The 2013 amendment by No. 631 deleted "only" at the end of (10); inserted "or offers" in (16)(A); inserted "or other tobacco products that" in (26)(A)(i); added "or other tobacco products" in (26(A)(ii); substituted "and" for "at or from an established place of business that" preceding "purchases" in (33)(A)(ii); added "or other tobacco product" in (33)(A)(ii); and added (34).

The 2013 amendment by Act No. 1273 inserted present (8) and redesignated the remaining subdivisions accordingly; deleted "except that 'licensed' does not mean that a person is registered as a manufacturer" in (14); inserted "federally licensed" in (15)(A); inserted "coin-operated" in (29); in (33), removed the (A) designation and redesignated (A)(i) and (ii) as (A) and (B), and deleted former (B).

26-57-205. Enforcement of subchapter.

It is the duty of all state, county, and city officers to assist Arkansas Tobacco Control in enforcing this subchapter.

History. Acts 1977, No. 546, § 25; A.S.A. 1947, § 84-4525; Acts 2013, No. 1273, § 8.

Amendments. The 2013 amendment substituted "assist Arkansas Tobacco Control in enforcing" for "enforce the provisions of."

26-57-206. Rules.

The Director of the Department of Finance and Administration, the Director of Arkansas Tobacco Control, and the Arkansas Tobacco Control Board may promulgate rules for the proper enforcement of their powers and duties as specifically prescribed by this subchapter.

History. Acts 1979, No. 911, § 16; A.S.A. 1947, § 84-4523n; Acts 1997, No. 1337, § 2; 2009, No. 785, § 8; 2013, No. 1273, § 8.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in two places, and deleted "and regulations" following "rules" in the heading and two places in the text.

The 2013 amendment inserted "and the Arkansas Tobacco Control Board may" preceding "promulgate"; and deleted "except the Director of Arkansas Tobacco Control shall have no authority to promulgate rules regarding manufacturers" following "this subchapter."

26-57-208. Levy of tax — Rates of tax. [Effective until October 1, 2013.]

An excise or privilege tax is levied as follows:

(1)(A) The excise or privilege tax on cigarettes sold in this state is ten dollars and fifty cents ($10.50) per one thousand (1,000) cigarettes sold.

(B)(i) Whenever there are two (2) adjoining cities each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in such adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside of Arkansas.

(ii) The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(C)(i) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line or in any Arkansas city that adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state.

(ii) The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(D)(i) The tax on cigarettes shall be at the rate imposed by law on cigarettes sold in the adjoining state when the cigarettes are sold in an Arkansas city or incorporated town whose corporate limits adjoin the corporate limits of an Arkansas border city.

(ii) As used in subdivision (1)(D)(i) of this section, "Arkansas border city" means a city that is entitled to the border zone cigarette tax rate and is separated by a navigable river from a city in the other state that is located in a metropolitan statistical area designated by the United States Census Bureau with a population of at least one million (1,000,000).

(iii) The tax shall not exceed the tax upon cigarettes otherwise imposed under Arkansas law.

(E)(i) The reduced border zone tax rates set forth in subdivisions (1)(B)-(D) of this section apply only to sales made at retail by Arkansas border zone retailers to actual consumers of the cigarettes.

(ii)*(a)* The sale of cigarettes by an Arkansas border zone retailer to any other retailer or wholesaler does not qualify for the reduced border zone tax rate.

(b) The full amount of Arkansas cigarette excise tax will be due on any cigarettes sold in such a manner;

(2)(A) The excise or privilege tax on tobacco products other than cigarettes on the sale by wholesalers to retailers, or by licensed retailers to the Director of the Department of Finance and Administration within the state is sixteen percent (16%) of the manufacturer's selling price.

(B) The tax shall be computed on the actual manufacturer's invoice price before discounts;

(3)(A)(i) The taxes levied by this section shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(ii) However, retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(B)(i) Any taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(a) Five percent (5%) of the total tobacco tax due for the first offense;

(b) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(c) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(ii) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(C) The provisions of this subdivision (3) shall not affect the provisions of § 26-57-228; and

(4) As provided in § 26-57-244, the director shall have the authority to make a direct assessment of excise tax against any person in possession of an untaxed tobacco product or unstamped cigarettes.

History. Acts 1977, No. 546, § 7; 1983, No. 399, § 1; 1985, No. 356, § 1; A.S.A. 1947, § 84-4507; Acts 1987, No. 628, § 2; 1997, No. 1337, § 3; 1999, No. 1246, § 1; 2007, No. 817, § 1; 2009, No. 940, § 1.

Publisher's Notes. For text of section effective October 1, 2013, see the following version.

Amendments. The 2009 amendment inserted (1)(D), redesignated the subsequent subdivision accordingly, and substituted "(1)(B)-(D)" for "(1)(B) and (C)" in (1)(E)(i).

26-57-208. Levy of tax — Rates of tax. [Effective October 1, 2013.]

An excise or privilege tax is levied as follows:

(1)(A) The excise or privilege tax on cigarettes sold in this state is ten dollars and fifty cents ($10.50) per one thousand (1,000) cigarettes sold.

(B)(i) Whenever there are two (2) adjoining cities each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in such adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside of Arkansas.

(ii) The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(C)(i) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line or in any Arkansas city that adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state.

(ii) The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(D)(i) The tax on cigarettes shall be at the rate imposed by law on cigarettes sold in the adjoining state when the cigarettes are sold in an Arkansas city or incorporated town whose corporate limits adjoin the corporate limits of an Arkansas border city.

(ii) As used in subdivision (1)(D)(i) of this section, "Arkansas border city" means a city that is entitled to the border zone cigarette tax rate and is separated by a navigable river from a city in the other state that is located in a metropolitan statistical area designated by the United States Census Bureau with a population of at least one million (1,000,000).

(iii) The tax shall not exceed the tax upon cigarettes otherwise imposed under Arkansas law.

(E)(i) The reduced border zone tax rates set forth in subdivisions (1)(B)-(D) of this section apply only to sales made at retail by Arkansas border zone retailers to actual consumers of the cigarettes.

(ii)*(a)* The sale of cigarettes by an Arkansas border zone retailer to any other retailer or wholesaler does not qualify for the reduced border zone tax rate.

(b) The full amount of Arkansas cigarette excise tax will be due on any cigarettes sold in such a manner;

(2)(A)(i) The excise or privilege tax levied on tobacco products other than cigarettes that are offered for sale in the state is sixteen percent (16%) of the invoice price to a wholesaler or retailer, before discounts.

(ii) However, the excise or privilege tax levied under subdivision (2)(A)(i) of this section is subject to the limitation stated in subdivision (2)(B) of this section.

(B)(i) The total amount of the excise or privilege taxes levied under §§ 26-57-208, 26-57-803, 26-57-805, and 26-57-807 on cigars shall not exceed fifty cents (50¢) per cigar.

(ii) If the total amount of the excise or privilege taxes levied under §§ 26-57-208, 26-57-803, 26-57-805, and 26-57-807 on cigars would exceed fifty cents (50¢) per cigar, the excise or privilege tax rates under §§ 26-57-208, 26-57-803, 26-57-805, and 26-57-807 shall be reduced proportionally.

(iii) The director shall adopt rules to implement this subdivision (2)(B);

(3)(A)(i) The taxes levied by this section shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(ii) However, retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(B)(i) Any taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(a) Five percent (5%) of the total tobacco tax due for the first offense;

(b) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(c) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(ii) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(C) The provisions of this subdivision (3) shall not affect the provisions of § 26-57-228; and

(4) As provided in § 26-57-244, the director shall have the authority to make a direct assessment of excise tax against any person in possession of an untaxed tobacco product or unstamped cigarettes.

History. Acts 1977, No. 546, § 7; 1983, No. 399, § 1; 1985, No. 356, § 1; A.S.A. 1947, § 84-4507; Acts 1987, No. 628, § 2; 1997, No. 1337, § 3; 1999, No. 1246, § 1; 2007, No. 817, § 1; 2009, No. 940, § 1; 2013, No. 510, § 1; 2013, No. 631, § 6.

Publisher's Notes. For text of section effective until October 1, 2013, see the preceding version.

Amendments. The 2009 amendment inserted (1)(D), redesignated the subsequent subdivision accordingly, and substituted "(1)(B)-(D)" for "(1)(B) and (C)" in (1)(E)(i).

The 2013 amendments by Nos. 510 and 631 rewrote (2).

Effective Dates. Acts 2013, No. 510, § 5: Oct. 1, 2013. Effective date clause provided: "Sections 1 through 4 of this act are effective on the first day of the second calendar month following the effective date of this act."

26-57-209. Exemption from tax.

(a) The following are not subject to the taxes imposed under § 26-57-208:

(1) Tobacco products sold to military departments of the United States or the state for resale on military bases within the state; and

(2) Tobacco products sold and delivered to authorized purchasers outside the state for resale and to other wholesalers licensed under this subchapter.

(b) A person licensed under this chapter that sells cigarettes to military departments of the United States or the state for resale on military bases under this section shall affix a tax-exempt stamp on the package, carton, or other container of cigarettes before transfer, shipment, or delivery.

History. Acts 1977, No. 546, § 7; 1979, No. 911, § 8; A.S.A. 1947, § 84-4507; Acts 2011, No. 836, § 3.

Amendments. The 2011 amendment added the introductory language of (a); deleted "are not subject to the taxes imposed by § 26-57-208" at the end of (a)(2); and added (b).

26-57-210. [Repealed.]

Publisher's Notes. This section, concerning waiver of tax, was repealed by Acts 2011, No. 836, § 4. The section was derived from Acts 1977, No. 546, § 17; A.S.A. 1947, § 84-4517; Acts 1997, No. 1337, § 4.

26-57-211. [As amended by Acts 1997, No. 434.] [Repealed.]

Publisher's Notes. This section, concerning wholesalers to pay taxes and reports and remittance of tax, was repealed by Acts 2009, No. 655, § 69. The section was derived from the following sources: Acts 1977, No. 546, § 8; A.S.A. 1947, § 84-4508; Acts 1993, No. 495, § 1; 1997, No. 434, § 7.

For current law, see the next section.

26-57-211. Wholesaler to pay taxes — Reports and remittance of tax.

(a)(1)(A) The taxes levied by this subchapter shall be reported and paid by wholesalers licensed under § 26-57-214.

(B) However, retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed under § 26-57-214.

(2)(A) A taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(i) Five percent (5%) of the total tobacco tax due for the first offense;

(ii) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(iii) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(B) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(3) This subsection does not affect § 26-57-228.

(b)(1) On or before the fifteenth day of each month, every wholesaler shall file a report for the previous month's tax collections with the Director of the Department of Finance and Administration.

(2) The report shall provide the information prescribed by the director.

(c)(1)(A)(i) When the report under subsection (b) of this section is filed, the wholesaler shall remit to the director with the report ninety-eight percent (98%) of the tax due for the previous month.

(ii) The discount of two percent (2%) under subdivision (c)(1)(A)(i) of this section does not apply to taxes due under § 26-57-804 or § 26-57-805.

(B) If the stamps deputy fails to remit the tax on or before the twentieth day of each applicable month, the wholesaler forfeits his or her claim to the discount described in subdivision (c)(1)(A) of this section, and the wholesaler shall remit to the director one hundred percent (100%) of the amount of tax due, plus any penalty or interest due.

(2) If the payment of any tax due becomes delinquent, the taxpayer shall remit the full amount of the tax due plus penalty.

(d)(1) The director may add a penalty of ten percent (10%) of the tax due to the tax due for the failure to file a report or for the failure to remit the taxes at the time required, or for both.

(2) If the director determines there has been an attempt to evade the tax, a penalty of not more than fifty percent (50%) of the tax due shall be added to the tax due.

(e)(1)(A) In computing the amount of tax due under this subchapter and any act supplemental to this subchapter, a wholesaler may deduct the cost of cigarette tax stamps and tobacco taxes lost through bad debts.

(B) Any deduction taken or refund paid attributable to bad debts shall not include interest.

(C) A bad debt incurred for a sale made before August 13, 1993, shall not be deducted.

(D) A bad debt must be deducted within three (3) years of the date of the sale for which the debt was incurred.

(E) If a deduction is taken for a bad debt and the taxpayer subsequently collects the debt in whole or in part, the tax on the amount so collected shall be paid and reported on the next return due after the collection.

(2)(A) As used in this section, "bad debt" means any cigarette or tobacco tax that the wholesaler legally claims as a bad debt deduction for federal income tax purposes.

(B) "Bad debt" includes without limitation a worthless check, a worthless credit card payment, and an uncollectible credit account.

(C) "Bad debt" does not include financing charges or interest, an uncollectible amount on property that remains in the possession of the taxpayer or vendor until the full purchase price is paid, expenses incurred in attempting to collect any debt, a debt sold or assigned to a third party for collection, and repossessed property.

History. Acts 1977, No. 546, § 8; A.S.A. 1947, § 84-4508; Acts 1993, No. 495, § 1; 1997, No. 434, § 7; 1997, No. 1337, § 5; 1999, No. 1246, § 2; 2009, No. 655, § 70.

Amendments. The 2009 amendment rewrote (a)(3) and (c)(1); substituted "without limitation" for "but is not limited to" in (e)(2)(B) and made minor stylistic changes throughout the section.

26-57-212. Wholesalers, warehousemen — Reports, payment of tax, and records.

(a)(1) Every licensed wholesaler and warehouse that handles, receives, stores, sells, and disposes of tobacco products in any manner in this state shall file a report with the Director of the Department of Finance and Administration on or before the fifteenth day of each month.

(2) Retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(3)(A) Any taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(i) Five percent (5%) of the total tobacco tax due for the first offense;

(ii) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(iii) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(B) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(4) The provisions of this subsection shall not affect the provisions of § 26-57-228.

(b) The report shall include:

(1) A statement of the tobacco products on hand at the beginning of the preceding month;

(2) The receipts and disbursements of tobacco products handled during the preceding month; and

(3) Any other information about the purchases and sales as may be prescribed by the director.

(c) All taxes due for the preceding month shall be remitted to the director at the time the report is filed.

(d)(1) Every wholesaler and warehouse shall permit personnel of the Department of Finance and Administration and auditors or agents of Arkansas Tobacco Control to enter into and to inspect their stock of tobacco products and all books, invoices, and any documents and records relating to receipts and disbursements of tobacco products.

(2) Auditors and agents shall not release to the Arkansas Tobacco Control Board or to the public any information identifying customers of the manufacturer, wholesaler, or warehouse except when necessary to notify the board of alleged violations of this subchapter.

(e)(1)(A) All purchases of cigars, cigarettes, cigarette papers, smoking tobacco, and other tobacco products for distribution within the State of Arkansas by a nonresident tobacco products wholesaler shall be evidenced by a separate invoice from the seller correctly showing the date of purchase and the quantity of each of the articles purchased by the wholesaler for distribution within Arkansas.

(B) Such stock purchased for distribution within Arkansas shall be kept in an entirely separate part of the building, separate and apart from stock purchased for sale or distribution in another state.

(2) At the time of shipping or delivering any cigars, cigarettes, cigarette papers, smoking tobaccos, or other tobacco into the State of Arkansas, a nonresident tobacco product wholesaler shall make a true duplicate invoice of the transaction that shows full and complete details of the sale or delivery of those articles and shall retain the duplicate invoice subject to use and inspection by the department and Arkansas Tobacco Control for a period of three (3) years.

(3) Nonresident tobacco wholesalers shall also keep a record of all cigarettes, cigarette papers, cigars, smoking tobaccos, and other tobacco products purchased by them for distribution within the State of Arkansas, and all books, records, and memoranda pertaining to the purchase and sale of such products shall be subject to inspection by the department and the board.

History. Acts 1977, No. 546, § 19; A.S.A. 1947, § 84-4519; Acts 1989, No. 893, § 1; 1997, No. 1337, §§ 6, 7; 1999, No. 1246, § 3; 2013, No. 1273, § 9.

Amendments. The 2013 amendment substituted "Arkansas Tobacco Control" for "the board" throughout the section; deleted former designations (d)(1)(A) and (B) and (d)(2) through (f), and inserted present designation (e)(1)(A); in present (d)(1), deleted "Board" following "Arkansas Tobacco Control", and, in present (d)(2), substituted "Arkansas Tobacco Control Board" for "board"; inserted "or agents" "and agents" following "auditors" in present (d)(1) and (d)(2), respectively; and substituted "that shows" for "which shall show" following "transaction" in present (e)(2).

26-57-213. Invoices.

(a) The tax shall be set out and identified on each invoice or statement as the "Arkansas Cigarette or Tobacco Products Excise Tax" as a separate billing or item.

(b) Copies of all invoices for the purchase or sale of any tobacco products shall be retained by each manufacturer, wholesaler, vendor,

and retailer for a period of three (3) years subject to examination by the Director of the Department of Finance and Administration and the Director of Arkansas Tobacco Control or their authorized agents upon demand at any time during regular business hours.

(c) Retailers shall:

(1) Maintain or produce copies of at least the last thirty (30) days of tobacco product invoices; and

(2) Make the invoices available upon demand during normal business hours in the retail store.

(d) Wholesalers, dealers, and manufacturers shall maintain three (3) years of tobacco product invoices that are available upon demand during normal business hours in the permitted location.

History. Acts 1977, No. 546, § 7; 1979, No. 911, § 8; A.S.A. 1947, § 84-4507; Acts 1997, No. 1337, § 8; 2009, No. 785, § 9; 2013, No. 1273, § 10.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (b).

The 2013 amendment deleted "except that only the Director of the Department of Finance and Administration may examine the invoices of manufacturers" at the end of (b); and added (c) and (d).

26-57-214. Registration and licensing required prior to doing business.

(a) A person shall not deal with, deliver, or cause to be delivered to a retailer or consumer or otherwise do business in tobacco products in this state without having first registered with the Director of Arkansas Tobacco Control and obtained a permit or license for that purpose, except that a person purchasing an existing permitted retail location may operate under the selling owner's permit for a period not to exceed thirty (30) days from the date of sale to allow the purchasing owner time to secure a permit.

(b) All permits and licenses shall be issued by the director.

(c) A manufacturer, wholesaler, retailer, general tobacco products vendor, or restricted tobacco products vendor who intends to sell tobacco products at or from one (1) or more places of business owned, rented, or leased by it shall obtain a separate license for each such place of business.

(d)(1) Any person licensed as a wholesaler shall not operate as a retailer unless a retailer's license is first secured.

(2) Any person licensed as a retailer shall not operate as a wholesaler unless a wholesaler's license is first secured.

(e) Any person who pleads guilty or nolo contendere to or is found guilty of buying, selling, or otherwise doing business in cigarettes or tobacco products in this state without first obtaining the appropriate license or permit is guilty of a Class C misdemeanor.

History. Acts 1977, No. 546, § 4; 1979, No. 911, § 7; A.S.A. 1947, § 84-4504; Acts 1997, No. 1337, § 9; 2003, No. 372, § 1; 2009, No. 785, § 10; 2013, No. 1273, §§ 11, 12.

Amendments. The 2009 amendment, in (a), inserted "deliver or cause to be delivered to any retailer or consumer," substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board," and made a related change.

The 2013 amendment, in (a), substituted "A person shall not deal" for "No person shall deal" and substituted "person purchasing an existing permitted retail location may operate under the selling owner's permit for a period not to exceed thirty (30) days from the date of sale to allow the purchasing owner time to secure a permit" for "manufacturer need only to register in accordance with § 26-57-215(b)(1)"; and, in (c), inserted "manufacturer" and deleted "be required to" preceding "obtain a separate."

26-57-215. Permits and licenses — Types.

(a)(1) Each person listed in this section, before commencing business, or if already in business, before continuing, shall pay an annual privilege fee and secure a permit or license from the Director of Arkansas Tobacco Control.

(2) However, a person purchasing an existing permitted retail location may operate under the selling owner's permit for a period not to exceed thirty (30) days from the date of sale to allow the purchasing owner time to secure a permit.

(b)(1) In addition to securing a permit or license under subsection (a) of this section, a manufacturer whose products are sold in this state shall register with the Director of the Department of Finance and Administration. A manufacturer whose products are sold in this state is not required to obtain a dealer's license for an employee operating as the manufacturer's sales representative if the manufacturer holds a license or permit under subsection (a) of this section.

(2) Every wholesaler of cigarettes who operates a place of business shall secure a wholesale cigarette permit and every wholesaler of any other tobacco products except cigarettes who operates a place of business shall secure a wholesale tobacco permit. Any wholesaler doing business in both cigarettes and other tobacco products shall secure both a wholesale cigarette permit and a wholesale tobacco permit.

(3) Every salesperson of any tobacco product who contacts a retailer in this state for the purpose of soliciting or taking and processing orders for the sale of tobacco products, or who through contact delivers or causes delivery of any tobacco product to a retailer in this state, shall first secure a salesperson's license. Application shall be made by the wholesaler or general tobacco products vendor who is the salesperson's employer. A salesperson's license is not transferable to another employer and must be surrendered to the Director of Arkansas Tobacco Control by the employer upon termination of the salesperson's employment.

(4)(A) Every retailer of cigarettes who operates a place of business shall secure a retail cigarette permit, and every retailer of any other tobacco products, except cigarettes, who operates a place of business

shall secure a retail tobacco permit. Any retailer doing business in both cigarettes and other tobacco products shall secure both a retail cigarette permit and a retail tobacco permit.

(B) Retailers may secure temporary permits to operate at picnics, fairs, carnivals, circuses, or any other temporary public gathering for periods not to exceed ten (10) days for a fee of five dollars ($5.00).

(5) A person engaged in the business of selling, leasing, renting, or otherwise disposing of or dealing with a tobacco product vending machine in this state shall secure a General Tobacco Products Vending Permit.

(6)(A)(i) Every general tobacco products vendor and every restricted tobacco products vendor must obtain a proper license from the Director of Arkansas Tobacco Control. However, municipal corporations may license and tax the privilege of doing business as a general tobacco products vendor or restricted tobacco products vendor in cities where such vendors maintain an established place of business, provided that the machine license tax imposed may not exceed fifty percent (50%) of the amounts levied on such vendors' licenses under this subchapter.

(ii) If a municipality by ordinance licenses or taxes the privilege of doing business as a general tobacco products vendor or restricted tobacco products vendor, proof that such a license is in good standing shall be a mandatory condition for the issuance of a state license required under this section.

(B)(i) In addition, every general tobacco products vendor or restricted tobacco products vendor must obtain a permit stamp for each machine of any type placed in operation in this state for the purpose of vending any tobacco products. This stamp shall be affixed to the machine in a conspicuous location together with a decal or card reciting the name, address, and license number of the vendor operating the machine.

(ii) No stamp will be issued for any machine upon which the state gross receipts or state compensating tax has not been paid, and the Director of the Department of Finance and Administration shall require proof of payment before the initial issue of a stamp for any tobacco products vending machine.

(c) Permits and licenses are issued as follows:

(1) A permit for a sole proprietor is issued in the sole proprietor's name and in the sole proprietor's fictitious business name, if any;

(2)(A) A permit for a partnership or limited liability company is issued in the name of:

(i) The managing partner or managing member; and

(ii) The partnership or limited liability company.

(B) The managing partner or managing member of a limited liability company may not be a partnership, limited liability company, or corporation;

(3) A permit for a publicly traded or nonpublicly traded corporation is issued in the name of the president or chief executive officer of the corporation and in the name of the corporation;

(4) It is a violation for a permitted entity not to provide written notification to the Director of Arkansas Tobacco Control within thirty (30) days of a change in the following:

(A) The managing partner, limited liability company managing member, or president or chief executive officer of a corporation; or

(B) The stockholders effecting twenty-five percent (25%) or more of the total voting shares of a nonpublicly traded corporation.

(d)(1) When an entity transfers a business permitted under this subchapter, the entity to which the business is transferred shall apply for and may be issued a new permit under this subchapter and may operate under the selling owner's permit only for a period not to exceed thirty (30) days from the date of transfer to allow the purchasing owner time to secure a permit.

(2)(A) When a partnership or limited liability company permitted under this subchapter changes, removes, or replaces the managing partner or managing member, the existing permit issued under this subchapter is void, and the partnership or limited liability company shall apply for and may be issued a new permit under this subchapter.

(B) However, the partnership or limited liability company may operate under the prior managing partner's or managing member's permit for a period not to exceed thirty (30) days from the date of transfer to allow the purchasing owner time to secure a permit.

(3)(A) When a nonpublicly traded corporation permitted under this subchapter changes, removes, or replaces the president or chief executive officer named on the permit or changes, removes, or replaces a stockholder who owns fifty percent (50%) or more of the total voting shares of the nonpublicly traded corporation's stock, the permit issued under this subchapter is void, and the nonpublicly traded corporation shall apply for and may be issued a new permit under this subchapter.

(B) However, the nonpublicly traded corporation may operate under the prior permit for a period not to exceed thirty (30) days from the date of removal or change to allow the nonpublicly traded corporation time to secure a new permit.

(4)(A) When a publicly traded corporation permitted under this subchapter changes, removes, or replaces the president or chief executive officer named on the permit or changes, removes, or replaces a stockholder who owns fifty percent (50%) or more of the total voting shares of the publicly traded corporation's stock, the permit issued under this subchapter is void, and the publicly traded corporation shall apply for and may be issued a new permit under this subchapter.

(B) However, the publicly traded corporation may operate under the prior permit for a period of not more than thirty (30) days from the date of removal or change to allow the publicly traded corporation time to secure a new permit.

(e) An entity may apply for and be issued a permit or license under this subchapter in advance of the effective date of the permit or license to facilitate continuity of business operations.

History. Acts 1977, No. 546, § 5; 1979, No. 911, § 6; A.S.A. 1947, § 84-4505; Acts 1997, No. 1337, § 10; 2009, No. 785, §§ 11–13; 2013, No. 1273, §§ 13–16.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (a), (b)(3), and (b)(6)(A)(i); and rewrote the first sentence in (b)(3).

The 2013 amendment added (a)(2); substituted "Each person" for "Every person, except manufacturers" in (a)(1); in (b)(1), substituted "In addition to securing a permit or license under subsection (a) of this section, a" for "Every" and substituted "A manufacturer whose products are sold in this state is not required to obtain a dealer's license for an employee operating as the manufacturer's sales representative if the manufacturer holds a license or permit under subsection (a) of this section" for "A manufacturer so registered is not licensed for purposes of this subchapter"; substituted "General Tobacco Products Vending Permit" for "dealer's license" in (b)(5); and added (c) through (e).

26-57-216. Permits and licenses — Number and location — Background check required.

The Arkansas Tobacco Control Board may determine in its reasonable discretion and in accordance with this subchapter:

(1) The number of licenses to be granted in the state;

(2)(A) The locations thereof.

(B) However, a retail, wholesale, or manufacturer license or permit shall not be issued to a residential address or for an address not zoned for the business seeking to secure the permit;

(3)(A) The persons to whom they are to be granted.

(B) However, a license or permit shall not be issued to:

(i) A person who has pleaded guilty or nolo contendere to or been found guilty of a felony; or

(ii) A business owned or operated, in whole or in part, by a person who has pleaded guilty or nolo contendere to or been found guilty of a felony; and

(4) Arkansas Tobacco Control shall conduct a criminal background check on each permit applicant.

History. Acts 1977, No. 546, § 3; 1979, No. 911, § 5; 1983, No. 255, § 1; 1985, No. 684, § 1; 1985, No. 824, § 1; A.S.A. 1947, § 84-4503; Acts 1997, No. 1337, § 11; 2013, No. 1273, § 17.

Amendments. The 2013 amendment rewrote the section, changed the section heading, and made stylistic changes.

26-57-219. Permits and licenses — Annual privilege tax.

(a) The annual privilege tax or fee for each permit or license authorized by § 26-57-215 is established as follows:

(1) Wholesale Cigarette Permit .....$ 500.00

(2) Wholesale Tobacco Permit 500.00

(3) General Tobacco Products Vending Permit (vendor) 100.00

(4) Tobacco Products Vending Machine License, per machine .10.00

(5)(A) Retail Cigarette/Tobacco Permit for retailers whose weekly gross cigarette and tobacco sales are less than $5,000 .....20.00

(B) Retail Cigarette/Tobacco Permit for retailers whose weekly gross cigarette and tobacco sales are between $5,000 and $15,000 .....30.00

(C) Retail Cigarette/Tobacco Permit for retailers whose weekly gross cigarette and tobacco sales are in excess of $15,000 .....50.00

(6) Wholesale Salesperson's License 25.00

(7) Dealer's License 25.00

(8) Manufacturer's Representative Fee 25.00

(9) Manufacturer Cigarette Permit 500.00

(10) Manufacturer Tobacco Permit 500.00

(b)(1) All permits and licenses issued under this subchapter expire on June 30 following the effective date of issuance.

(2)(A) Upon the failure to timely renew a license or permit issued under this subchapter, a late fee of two (2) times the amount of the license or permit fee in question shall be owed in addition to the annual privilege fee for the permit or license.

(B) An expired permit or license that is not renewed before September 1 following the expiration of the permit or license shall not be renewed, and the holder of the expired permit or license shall submit an application for a new permit or license.

(3) A permit or license shall not be issued to the applicant until the late fee and the license or permit fee have been paid.

(c) A permit or license issued under this subchapter shall not be renewed for a permit or license holder who is delinquent more than ninety (90) days on a privilege fee, tax relating to the sale or dispensation of cigarettes or tobacco products, or any other state and local tax due the Director of the Department of Finance and Administration.

(d) A person who is delinquent more than ninety (90) days on a state or local tax may not renew or obtain a permit or license issued under this subchapter except upon certification that the permit or license holder has entered into a repayment agreement with the Department of Finance and Administration and is current on the payments.

History. Acts 1977, No. 546, § 5; 1979, No. 911, § 6; A.S.A. 1947, § 84-4505; Acts 1997, No. 1337, § 13; 1997, No. 1359, § 22; 1999, No. 1591, §§ 6, 7; 2001, No. 1368, § 2; 2013, No. 1273, § 18.

Amendments. The 2013 amendment inserted "cigarette and tobacco" following "weekly gross" in (a)(5)(A) through (a)(5)(C); inserted "Wholesale" in (a)(6); added (a)(9) and (10); in (b)(1), substituted "subchapter" for "section shall" and deleted "of the year" following "June 30"; added (b)(2)(B); in (b)(2)(A), substituted "renew a license or permit issued under this subchapter" for "pay the annual privilege fee" and added "for the permit or license" to the end; in (b)(3) and (c), substituted "A permit" for "No permit" and inserted "not" following "shall"; substituted "subchapter" for "section" in (c) and (d); and deleted "that the person" preceding "is current" in (d).

26-57-220. Permits and licenses — Duration.

All permits and licenses issued under this subchapter shall expire on June 30 following the effective date of issuance.

History. Acts 1977, No. 546, § 5; A.S.A. 1947, § 84-4505; Acts 2013, No. 1273, § 18.

Amendments. The 2013 amendment deleted "of the year" following "June 30."

26-57-221. Permits and licenses — Not transferable.

A license or permit is not:

(1)(A) Transferable to a subsequent owner or operator.

(B) However, a person purchasing an existing permitted retail location may operate under the selling owner's permit for a period not to exceed thirty (30) days from the date of sale to allow the purchasing owner time to secure a permit; or

(2) Transferable to a different physical location unless the permit holder obtains permission from the Director of Arkansas Tobacco Control.

History. Acts 1977, No. 546, § 5; 1979, No. 911, § 6; A.S.A. 1947, § 84-4505; Acts 1997, No. 1337, § 14; 2009, No. 785, § 14; 2013, No. 1273, § 18.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board."

The 2013 amendment rewrote the existing language; and added (1) and (2).

26-57-222. Permits and licenses — Duplicates.

When a permit or license is lost by a holder, a duplicate permit or license may be issued upon application and for a fee of five dollars ($5.00) when sufficient proof has been given the Director of Arkansas Tobacco Control.

History. Acts 1977, No. 546, § 5; A.S.A. 1947, § 84-4505; Acts 1997, No. 1337, § 14; 2009, No. 785, § 14.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board."

26-57-223. Permits and licenses — Suspension or revocation.

(a) All permits and licenses issued under this subchapter may be suspended or revoked by the Director of Arkansas Tobacco Control for any violation of this subchapter or the rules pertaining to this subchapter.

(b) The director may revoke for one (1) year all licenses or permits to deal in tobacco products of any person who is convicted of violating this subchapter or the regulations pertaining to this subchapter a second time.

History. Acts 1977, No. 546, §§ 25, 30; A.S.A. 1947, §§ 84-4525, 84-4530; Acts 1997, No. 1337, § 14; 2001, No. 965, § 1; 2009, No. 785, § 14.

Amendments. The 2009 amendment, in (a), substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board," and substituted "rules" for "regulations."

26-57-227. Operation of vending machine without license a public nuisance — Seizure and sale — Redemption.

(a) Any person who engages in the business of owning, operating, or leasing any tobacco product vending machines without first obtaining the license described in this subchapter is declared to be maintaining a public nuisance.

(b) Any tobacco product vending machine so operated may be seized and sold by the Director of Arkansas Tobacco Control at public auction upon the order of the Pulaski County Circuit Court.

(c) These machines may be redeemed prior to sale by the owner upon the payment of all taxes due on the machine and all costs and expenses incurred in enforcing this section if the offender pays all taxes and costs within ten (10) days after seizure of the machines by the director.

History. Acts 1977, No. 546, § 28; A.S.A. 1947, § 84-4528; Acts 1997, No. 1337, § 17; 2009, No. 785, § 15.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (b).

26-57-228. Purchases from unregistered, unlicensed dealers unlawful.

(a) It is unlawful for a retailer of tobacco products to purchase tobacco products from a person other than a licensed manufacturer, licensed wholesaler, or other licensed retailer.

(b) Any retailer violating the provisions of this subchapter is guilty of a Class B misdemeanor for each purchase defined in subsection (a) of this section.

History. Acts 1977, No. 546, § 9; A.S.A. 1947, § 84-4509; Acts 2013, No. 1273, § 19.

Amendments. The 2013 amendment substituted "licensed" for "registered" in (a) and made stylistic changes.

26-57-229. Licensee as wholesaler and retailer.

(a) A person who is licensed as a wholesaler and as a retailer shall maintain wholesale and retail stocks in separate buildings. However, this subsection shall not apply if stamps denoting payment of the tax on the wholesale stocks and the retail stocks of cigarettes are properly affixed.

(b) Every wholesaler who maintains a business as a retailer shall keep a record of his or her wholesale operations showing the amount of stamps purchased, if any, and all purchases from whatever source, and all sales whether to himself or herself as retailer or to another. This record shall be subject to inspection by the Department of Finance and Administration and the Arkansas Tobacco Control Board.

(c) Records shall be kept on forms prescribed by the Director of the Department of Finance and Administration.

(d) If a wholesaler refuses to keep the records required by or to comply with this section, the Director of Arkansas Tobacco Control may revoke all permits that have been issued to the wholesaler.

History. Acts 1977, No. 546, § 20; A.S.A. 1947, § 84-4520; Acts 1997, No. 1337, § 18; 2009, No. 785, § 16; 2013, No. 1273, § 20.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (d).

The 2013 amendment, in (d), substituted "If a wholesaler" for "When a wholesaler"; deleted "with the provisions of" following "comply with," and substituted "may revoke" for "shall revoke."

26-57-230. Common carriers.

(a) Common carriers transporting tobacco products may be required by the Director of the Department of Finance and Administration or the Director of Arkansas Tobacco Control to give a statement of all consignments of tobacco products showing date, point of origin, point of delivery, and to whom delivered.

(b) All common carriers shall permit their records relating to shipment or receipt of tobacco products to be examined by the Director of the Department of Finance and Administration, the Director of Arkansas Tobacco Control, or their agents.

(c) A person who fails or refuses to give the statement, reports, or invoices required by this section or who refuses to permit the department or the board to examine the person's records is guilty of a Class C misdemeanor.

History. Acts 1977, No. 546, § 24; A.S.A. 1947, § 84-4524; Acts 1997, No. 1337, § 19; 2013, No. 1273, § 21.

Amendments. The 2013 amendment, in (a), substituted "Director of Arkansas Tobacco Control" for "Arkansas Tobacco Control Board"; in (b), inserted "Director of the" and substituted "the Director of Arkansas Tobacco Control, or their agents" for "or the board"; and substituted "A person who fails or refuses to give the statement" for "Any person who fails or refuses to give to the department or the board the statement" in (c).

26-57-231. Failure to allow inspection unlawful.

A person required to pay taxes under this subchapter who fails or refuses to permit the Department of Finance and Administration or Arkansas Tobacco Control to examine or inspect the person's taxable stock of tobacco products, invoice books, papers, and memoranda considered necessary to secure information directly relating to the enforcement of this subchapter is guilty of a:

(1) Violation for the first and second offense; and

(2) Class C misdemeanor for each additional offense.

History. Acts 1977, No. 546, § 28; A.S.A. 1947, § 84-4528; Acts 1997, No. 1337, § 19; 2013, No. 1273, § 21.

Amendments. The 2013 amendment, in the introductory language, substituted "A person" for "Any person," deleted "the provisions of" preceding "this subchapter," "the" preceding "Arkansas," and "Board" following "Control."

26-57-232. Wholesalers — Restrictions — Criminal violations.

(a) A wholesaler shall conduct the wholesaler's business subject to the following restrictions:

(1) The wholesaler shall secure a permit from the Arkansas Tobacco Control Board;

(2) Except as otherwise provided herein, the wholesaler may sell tobacco products only to persons properly licensed under this subchapter;

(3) The wholesaler before selling, delivering, or otherwise disposing of cigarettes to retailers in this state shall affix stamps of the proper denominations to show that the tax has been paid. The stamp shall be affixed in the manner prescribed by the Director of the Department of Finance and Administration; and

(4)(A) The wholesaler with each sale of cigarettes shall supply the retailer with an invoice showing the quantity, kind, and price of cigarettes sold, and shall supply the stamps required to show that the tax has been paid.

(B) The wholesaler shall retain a copy of this information in the wholesaler's files for three (3) years subject to the inspection by the Department of Finance and Administration and the Arkansas Tobacco Control Board.

(b) Any wholesaler who fails or refuses to affix or cancel the stamps or who fails or refuses to keep the records or who fails or refuses to furnish the statements and information or make the reports as required by this subchapter or as prescribed by the Director of the Department of Finance and Administration and the Director of Arkansas Tobacco Control, or who violates any of the requirements of §§ 26-57-212, 26-57-229, and 26-57-242 is guilty of a violation for the first offense and a Class C misdemeanor for each additional offense.

History. Acts 1977, No. 546, §§ 11, 23; 1979, No. 911, § 9; A.S.A. 1947, §§ 84-4511, 84-4523; Acts 1997, No. 1337, § 19; 2009, No. 785, §§ 17, 18; 2013, No. 1273, § 22.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (a)(1) and (b).

The 2013 amendment substituted "Arkansas Tobacco Control Board" for "Director of Arkansas Tobacco Control" in (a)(1).

26-57-233. Salesperson — Restrictions — Violations.

Every salesperson who sells, offers for sale, takes orders, and solicits for sale any tobacco products for immediate or future delivery to wholesalers of tobacco products in this state may do so only under the following restrictions:

(1) The salesperson shall secure a permit from the Director of Arkansas Tobacco Control;

(2) The salesperson may sell to or take orders for tobacco products from licensed wholesalers provided that the tobacco products are consigned or delivered only to registered manufacturers or licensed wholesalers;

(3) The salesperson may sell to or take orders for tobacco products from licensed retailers provided that the tobacco products shall be delivered to the retailer only by a licensed wholesaler; and

(4)(A) The wholesaler shall keep complete records of all sales or orders taken for dealers in tobacco products in this state, copies of all invoices, orders taken, and other instruments as evidence of sales or disposition of tobacco products.

(B) The wholesaler shall retain the information required under subdivision (4)(A) of this section in a designated place within this state for three (3) years subject to inspection by the Department of Finance and Administration and Arkansas Tobacco Control.

History. Acts 1977, No. 546, §§ 10, 23; A.S.A. 1947, §§ 84-4510, 84-4523; Acts 1997, No. 1337, § 19; 2009, No. 655, § 71; 2009, No. 785, § 19; 2013, No. 1273, § 23.

Amendments. The 2009 amendment by No. 655 inserted "and" at the end of (3).

The 2009 amendment by No. 785 substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (1).

The 2013 amendment, in (4)(B), substituted "the information required under subdivision (4)(A) of this section" for "this information," deleted "the" preceding "Arkansas," and "Board" following "Control."

26-57-234. Retailers and vendors — Restrictions — Violations.

(a) Retailers and vendors shall conduct their businesses subject to the following restrictions:

(1) Retailers and vendors not possess, place in their stock, have on their premises, sell, or otherwise dispose of any cigarettes to which stamps denoting the tax due thereon have not been affixed;

(2) Retailers and vendors require that properly cancelled stamps are affixed to all cigarettes purchased or otherwise received or accepted by them before they purchase or otherwise become the owner or possessor of the cigarettes;

(3) Retailers and vendors require from the wholesaler at the time of each purchase or receipt of cigarettes an invoice showing the quantity, kind, and price of the cigarettes and the stamps required to show that the tax has been paid, and date of sale or delivery;

(4)(A) The retailer shall keep records showing the description and date of the receipt of each lot of tobacco products, from whom purchased, and when received on the premises, or any other requirements prescribed by the Director of the Department of Finance and Administration.

(B) The records required under subdivision (a)(4)(A) of this section are subject to inspection by the Department of Finance and Administration and Arkansas Tobacco Control;

(5) The Director of the Department of Finance and Administration may require retailer reports covering receipts and sales of tobacco products monthly or for any other period;

(6) The retailer shall permit the department and Arkansas Tobacco Control or any peace officer acting under their direction to inspect the retailer's stock of merchandise and premises, including any room or building used in connection with the retailer's business.

(b) Upon a retailer's failure to comply with any part of this section, the Director of Arkansas Tobacco Control may revoke the retailer's permit.

(c) Any retailer or vendor who fails or refuses to retain in his or her files invoices of tobacco products and stamps, or who fails or refuses to furnish the statements and information or make the reports concerning receipts and sales of tobacco products as required by this subchapter or prescribed by the Director of the Department of Finance and Administration, or who violates any of the requirements of this section, is guilty of a violation.

History. Acts 1977, No. 546, §§ 22, 23; 1979, No. 911, §§ 10-12; A.S.A. 1947, §§ 84-4522, 84-4523; Acts 1997, No. 1337, § 19; 2009, No. 785, § 20; 2013, No. 1273, § 24.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (b).

The 2013 amendment redesignated (a)(4) as (a)(4)(A) and (B); in (a)(4)(B), substituted "The records required under subdivision (a)(4)(A) of this section are" for "These records shall be," deleted "the" preceding "Arkansas," and "Board" following "Control"; and substituted "Arkansas Tobacco Control" for "the board" in (a)(6).

26-57-235. Cigarette stamps generally.

(a) The purpose of the stamps is to provide a method for collecting the tax imposed on cigarettes sold in this state.

(b) The Director of the Department of Finance and Administration shall prescribe the kind of stamps to be used in the administration of this subchapter.

(c)(1) The director shall prepare and maintain an adequate supply of cigarette stamps.

(2) The director shall require a printer's certificate with each set of stamps delivered.

(3) The cost of printing the stamps shall be paid from the appropriation made for the administration of the Department of Finance and Administration.

(4)(A) All stamps prescribed by the director for affixation to cigarette packages shall be designed and furnished in such a fashion as to permit identification of the person that affixed the stamp to the particular package of cigarettes by means of a number or other mark on the stamp.

(B) The department shall maintain for not less than three (3) years information identifying the person that affixed the tax stamp to each

package of cigarettes, which information shall not be confidential or exempt from disclosure to the public.

(d)(1) Cigarettes sold in, into, or from the state shall be in packages of twenty (20) or twenty-five (25) cigarettes.

(2) The purchase or sale of individual cigarettes is prohibited.

History. Acts 1977, No. 546, § 12; A.S.A. 1947, § 84-4512; Acts 1989, No. 699, § 1; 1997, No. 1337, § 19; 2001, No. 1545, § 3; 2011, No. 836, § 5.

Amendments. The 2011 amendment added (d).

26-57-236. [As amended by Acts 1997, No. 434.] [Repealed.]

Publisher's Notes. This section, concerning stamp deputies [as amended by Acts 1997, No.434.], was repealed by Acts 2011, No. 836, § 6, and 2011, No. 983, § 17. The section was derived from Acts 1977, No. 546, §§ 13, 14; A.S.A. 1947, §§ 84-4513, 84-4514; Acts 1997, No. 434, § 8; 2001, No. 1669, § 32; 2001, No. 1698, § 1; 2009, No. 180, § 1; 2009, No. 655, § 72.

26-57-236. Stamp deputies — Appointment and revocation of appointment — Reporting.

(a) The Director of the Department of Finance and Administration shall furnish tax stamps to licensed wholesalers through stamp deputies.

(b)(1) The director may appoint and commission stamp deputies to handle the stamps and collect the tax on cigarettes before sales of cigarettes are made to the retailers.

(2) The director shall not appoint and commission a person as a stamp deputy unless the person:

(A) Is the owner or officer of a wholesaler licensed under this subchapter;

(B) Certifies each calendar quarter on a form prescribed by the director that the person has and will comply with the requirements of this subchapter;

(C) Consents to the jurisdiction of the state to enforce the requirements of this subchapter and waives any claim of sovereign immunity to the contrary;

(D) Provides complete and accurate reports as required by this subchapter;

(E) Waives the confidentiality laws necessary to permit the director to:

(i) Create and make available the list described in subdivision (b)(6) of this section; and

(ii) Share information reported under this subchapter and other laws with the taxing authorities or law enforcement authorities of other states or with any other entity permitted by the director to aggregate the data;

(F) Has furnished a bond in an amount and in the form prescribed by the director; and

(G) If located outside of the state, has appointed an agent in this state to act as agent for the service of process for the purpose of enforcing this subchapter.

(3) An appointment and commission as a stamp deputy by the director is effective for one (1) year.

(4) A stamp deputy acting within the scope of the stamp deputy's authority is an agent of the director and is accountable as such for any wrongful acts.

(5) A stamp deputy's open account shall not exceed seventy-five percent (75%) of the total amount of the bond provided by the stamp deputy.

(6)(A) The director shall list on the website of the Department of Finance and Administration the names of all persons appointed and commissioned as stamp deputies under this section.

(B) Manufacturers, importers, and sales entity affiliates are entitled to rely on the list described in subdivision (b)(6)(A) of this section in selling cigarettes.

(c)(1) A stamp deputy's appointment and commission are subject to revocation if the stamp deputy:

(A) Fails to submit a report required under this subchapter or the Tobacco Products Reporting Act, § 26-57-1401 et seq.;

(B) Files an incomplete or inaccurate report or an inaccurate certification;

(C) Fails to pay taxes due under this subchapter;

(D) Sells cigarettes in or into the state in a package that bears a stamp permitted under this subchapter that is not the correct stamp and provides for a lower level of tax than the correct stamp;

(E) Sells unstamped cigarettes in, into, or from the state or possesses unstamped cigarettes in the state except as permitted under this subchapter;

(F) Purchases, sells in or into the state, or affixes a tax stamp to a package containing cigarettes of a manufacturer or brand family that is not listed on the directory of cigarettes approved for stamping and sale published by the Attorney General under § 26-57-1303, or possesses cigarettes described in this subdivision (c)(1)(F) more than twenty-one (21) days after receiving notice that the manufacturer or brand family is not on the state directory, except as otherwise permitted under this subchapter;

(G) Purchases or sells cigarettes in violation of this subchapter; or

(H) Has his or her appointment and commission or similar license or permit revoked or terminated in any other state based on acts or omissions that would, if done in Arkansas, be grounds for the revocation of the stamp deputy's appointment and commission under this section unless the stamp deputy demonstrates that the revocation or termination in the other state was effected without due process.

(2)(A) If a stamp deputy commits a violation under subdivisions (c)(1)(A)-(D) of this section that was not knowing, the stamp deputy is entitled to cure the violation within thirty (30) days of the violation.

(B) The appointment and commission of a stamp deputy who fully cures the violation under subdivision (c)(2)(A) of this section shall not be revoked as a result of the violation.

(C) A violation that has been cured under this subdivision (c)(2) is not a violation for purposes of subdivision (c)(3) of this section and subsection (d) of this section.

(3)(A) If a stamp deputy commits a knowing violation under subdivision (c)(1) of this section, the stamp deputy is subject to the following civil penalties:

(i) For a first violation, up to one thousand dollars ($1,000); and

(ii) For a second or subsequent violation, up to five thousand dollars ($5,000) per violation.

(B) For violations under subdivisions (c)(1)(E)-(H) of this section, each sale constitutes a separate violation.

(4)(A) The director shall:

(i) Promptly remove from the list of stamp deputies maintained under subdivision (b)(6) of this section a stamp deputy whose appointment and commission has been revoked; and

(ii) Publish a notice of the termination on the department's website.

(B) Beginning ten (10) days following the publication of a notice under subdivision (c)(4)(A) of this section, a person shall not sell cigarettes to or purchase cigarettes from a stamp deputy whose appointment and commission have been revoked.

(5) If a stamp deputy whose appointment and commission have been revoked is also the manufacturer of cigarettes, the stamp deputy and its brand families shall be removed from the directory of cigarettes approved for stamping and sale maintained by the Attorney General under § 26-57-1303.

(d) A stamp deputy whose appointment and commission have been revoked under subsection (c) of this section is eligible for reinstatement:

(1) Ninety (90) days following revocation for a first violation under subdivisions (c)(1)(A)-(D) of this section that was not knowing;

(2) One hundred eighty (180) days following revocation for a second failure under subdivisions (c)(1)(A)-(D) of this section that was not knowing;

(3) One (1) year following revocation for a third or subsequent violation under subdivisions (c)(1)(A)-(D) of this section that was not knowing;

(4) One (1) year following revocation for a first knowing violation under subdivision (c)(1) of this section; and

(5) Three (3) years following revocation for a second or subsequent knowing violation under subdivision (c)(1) of this section.

(e)(1)(A) By the fifteenth day of each month, a stamp deputy shall file a report in the form prescribed by the director, and the stamp deputy shall certify to the state that the report is complete and accurate.

(B) The report required under subdivision (e)(1)(A) of this section shall contain the following information identified by name and

number of cigarettes and the manufacturer and brand family of the cigarettes:

(i) The total number of cigarettes acquired by the stamp deputy during the month for sale in or into the state and for sale from Arkansas into another state;

(ii) The total number of cigarettes sold in or into the state by the stamp deputy during the month;

(iii) The total number of cigarettes held in inventory in the state or for sale into the state by the stamp deputy as of the end of the previous month;

(iv) The total number of stamps the stamp deputy affixed during the month, including the following:

(a) How many of each type of stamp the stamp deputy affixed by number;

(b) The total dollar amount of tax paid; and

(c) The total number of cigarettes contained in the packages to which the stamp deputy affixed each type of tax stamp; and

(v) Any additional information required by the director to assist in the enforcement of this chapter, §§ 26-57-260 and 26-57-261, and §§ 26-57-1301 — 26-57-1308.

(2) In addition to the reports submitted under this section, the stamp deputy shall submit any information required by the director, including without limitation the manufacturer, brand family, and number of the cigarettes on which the reports are submitted.

(3) The director may share the information reported under this section with the taxing authorities or law enforcement authorities of Arkansas or another state or with any other entity permitted by the director to aggregate such data.

(f)(1) The director shall pay a commission to each stamp deputy for the sale of cigarette tax stamps, the affixing of a cigarette tax stamp to each package of cigarettes, and the collection of cigarette taxes.

(2) The commission paid under subdivision (f)(1) of this section shall not be less than three percent (3%) of the total aggregate cigarette tax collected by the stamp deputy.

(g)(1) All deposits held by a bank for a stamp deputy that represent the sales of stamps are trust funds and shall be held as special deposits.

(2) If the bank becomes insolvent, the deposits under subdivision (g)(1) of this section shall be classed and considered as preferred claims of the state.

History. Acts 1977, No. 546, §§ 13, 14; A.S.A. 1947, §§ 84-4513, 84-4514; Acts 1997, No. 1337, § 19; 2009, No. 180, § 2; 2009, No. 542, § 1; 2009, No. 655, § 73; 2011, No. 836, § 7.

Amendments. The 2009 amendment by No. 180 substituted "three percent (3%)" for "three and eight-tenths percent (3.8%)" in (f).

The 2009 amendment by No. 542 added (h).

The 2009 amendment by No. 655 re-

wrote (f).

The 2011 amendment rewrote the section.

Effective Dates. Acts 2011, No. 836, § 20: "Sections 7 and 8(i), (j), and (k) of this act are effective on and after January 1, 2012."

26-57-240. Counterfeiting of stamps unlawful — Penalty.

Upon conviction, a person is guilty of a Class D felony if the person:

(1) Falsely and fraudulently makes, forges, or counterfeits any stamps prescribed for use in the administration of this subchapter;

(2) Knowingly has in his or her possession any false, altered, forged, previously used, or counterfeit stamps prescribed for use in the administration of this subchapter; or

(3) Knowingly utters, publishes, passes, or tenders as true any false, altered, forged, previously used, or counterfeit stamps prescribed for use in the administration of this subchapter.

History. Acts 1977, No. 546, § 29; A.S.A. 1947, § 84-4529; Acts 2009, No. 655, § 74.

Amendments. The 2009 amendment rewrote the section.

26-57-242. Wholesaler — Transporting cigarettes with stamps affixed outside state for reentry.

(a) Every wholesaler of tobacco products doing business at or from an established place of business located within this state and authorized to purchase untaxed tobacco products on an open account directly from manufacturers who have general distribution of tobacco products in Arkansas, and who sell to licensed retailers, are prohibited from transporting cigarettes to which stamps have been affixed outside the boundaries of the State of Arkansas for warehousing or reentry into this state, or both, for either sale or resale.

(b) The prohibition contained in this section does not apply to any wholesaler of tobacco products who was actually engaged in and had established distribution practice of transporting cigarettes upon which the Arkansas stamp had been affixed outside the boundaries of the State of Arkansas for warehousing or reentry into the State of Arkansas, or both, for sale or resale on or before January 1, 1972.

(c) Upon violation of this section by a wholesaler, the Director of Arkansas Tobacco Control shall revoke the wholesaler's permit.

History. Acts 1977, No. 546, § 21; A.S.A. 1947, § 84-4521; Acts 1997, No. 1337, § 20; 2009, No. 785, § 21.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (c).

26-57-244. Possession of untaxed, unstamped products — Notice and prima facie evidence.

(a) It is unlawful for a person to receive or have in the person's possession for sale, consumption, or any other purpose, any untaxed tobacco products or unstamped cigarettes unless the tax prescribed by

this subchapter has been paid directly to the Director of the Department of Finance and Administration by the person in possession of the untaxed tobacco products or unstamped cigarettes.

(b) The absence of the stamps from any container of cigarettes is notice to all persons that the tax has not been paid and is prima facie evidence of the nonpayment of the tax.

(c) If tax has been paid to the director on any untaxed tobacco products or unstamped cigarettes, a consumer may establish proof of such payment by providing a receipt or any other documentation that clearly indicates that the tax was paid.

(d) This section does not relieve any retail cigarette and tobacco permit holder from the obligations placed on them by § 26-57-228.

(e) A retail cigarette or tobacco permit holder shall not have in his or her possession any unstamped cigarettes or any tobacco products on which the tax prescribed by this subchapter has not been paid.

(f)(1) An Arkansas consumer who purchases any untaxed tobacco products or unstamped cigarettes shall be liable for reporting and remitting all excise tax due on the tobacco products or cigarettes as levied under this subchapter.

(2) The tax due shall be reported on forms provided by the director on or before the fifteenth day of the month following the month in which the untaxed purchase was made.

(3) The report shall provide the information prescribed by the director.

(4) When a report is filed, the consumer shall remit the full amount of tax due on the untaxed purchase to the director.

(g) The director is authorized to directly assess the excise tax due on any untaxed tobacco products or unstamped cigarettes against a consumer who purchases the items and fails to report and remit the excise tax due in a timely manner.

(h) Subsections (f) and (g) of this section are subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(i)(1) A wholesaler may possess unstamped cigarettes for sale in or into the state if the wholesaler:

(A) Is permitted to purchase, sell, and affix a stamp to the package containing the cigarettes under § 26-57-1303(c); and

(B) Provides on at least a monthly basis and on the form prescribed by the director a report indicating the following for each brand family:

(i) The number of cigarettes purchased during the reporting period;

(ii) The number of cigarettes on which the wholesaler affixed the tax stamp prescribed by this subchapter;

(iii) The number of cigarettes on which the wholesaler affixed the tax stamp or other similar indicia of taxation prescribed by another state's laws; and

(iv) The number of cigarettes that remain in the wholesaler's inventory.

(2) A wholesaler may possess unstamped cigarettes for sale from Arkansas into another state if the wholesaler:

(A) Is permitted to purchase, sell, and affix a stamp to the package containing the cigarettes under the other state's tobacco legislation or directory law, if any;

(B) Would not violate the law of the other state by selling or affixing the tax stamp; and

(C) Provides on at least a monthly basis and on the form prescribed by the director a report indicating the following for each brand family:

(i) The number of cigarettes purchased during the reporting period;

(ii) The number of cigarettes on which the wholesaler affixed the tax stamp prescribed by this subchapter;

(iii) The number of cigarettes on which the wholesaler affixed the tax stamp or other similar indicia of taxation prescribed by another state's laws; and

(iv) The number of cigarettes that remain in the wholesaler's inventory.

(3)(A)(i) Except as provided in § 26-57-242, a wholesaler may transfer, transport, or cause to be transported unstamped cigarettes that the wholesaler owns and is permitted to possess from one (1) of the wholesaler's facilities in Arkansas to another of the wholesaler's facilities.

(ii) If the wholesaler's facility to which the cigarettes are transferred is located in Arkansas, the applicable time period for affixing a stamp remains in effect and continues to run from the date of the wholesaler's original receipt of the cigarettes.

(iii) If the wholesaler's facility to which the cigarettes are transferred is located outside of Arkansas, the wholesaler shall report the quantity and brand of the cigarettes to the director, the Attorney General, and the taxing authority of the other state within fifteen (15) days following the end of the month in which the transfer was made.

(B) A stamp deputy may not transfer cigarettes from Arkansas into another state if the transfer would violate the law of the other state.

(j)(1) A common carrier or contract carrier may possess and transport unstamped cigarettes in connection with a sale or other transfer permitted under this subchapter if the common carrier or contract carrier has in its possession:

(A) Documents establishing that title to the unstamped cigarettes remains with the manufacturer, importer, or wholesaler; or

(B) Bills of lading or other shipping documents establishing that the common carrier or contract carrier is delivering the cigarettes on behalf of a person authorized to sell or transfer the unstamped cigarettes under this subchapter.

(2) The documents required under subdivision (j)(1) of this section shall list the name and address of the person to whom the cigarettes are being delivered.

(k) A manufacturer or importer and the contractor, agent, common carrier, or contract carrier of a manufacturer or importer may possess, transport, or cause to be transported unstamped cigarettes in, into, or from the state for use in connection with consumer testing permitted under the laws of the state in which the testing is to be done if the:

(1) Cigarettes are not currently commercially marketed in the United States;

(2) Manufacturer pays applicable state excise taxes on the cigarettes;

(3) Nonparticipating manufacturer, if any, deposits the necessary escrow on the cigarettes under § 26-57-261;

(4) Participating manufacturer, if any, includes the cigarettes in the participating manufacturer's volume for purposes of the Master Settlement Agreement, as defined in § 26-57-260;

(5) Cigarettes are provided at no cost to the consumer testing participants; and

(6) Cigarettes used by a manufacturer or importer for consumer testing do not exceed a reasonable quantity.

History. Acts 1977, No. 546, § 26; A.S.A. 1947, § 84-4526; Acts 2007, No. 817, § 2; 2011, No. 836, § 8.

Amendments. The 2011 amendment made stylistic changes to (a), (d), (e), (f), (g), and (h); rewrote (i); and added (j) and (k).

Effective Dates. Acts 2011, No. 836, § 20: "Sections 7 and 8(i), (j), and (k) of this act are effective on and after January 1, 2012."

26-57-245. Unstamped products or products with unpaid taxes — Purchase, sale, receipt, etc., a criminal offense — Deceptive trade practice.

(a) Except as otherwise authorized by this subchapter, a person who knowingly purchases, sells, offers for sale, receives, possesses, or transports upon his or her person, on his or her premises, or in his or her vehicle any cigarettes that do not have affixed thereon the stamps required by this subchapter or any other tobacco products upon which the taxes imposed by this subchapter have not been paid is guilty of a criminal offense that is a:

(1) Class C felony if the tax value of the total amount of tobacco products is equal to or exceeds one hundred dollars ($100); or

(2) Class A misdemeanor if the tax value of the total amount of tobacco products is less than one hundred dollars ($100).

(b)(1) A violation under subsection (a) of this section is a deceptive or unconscionable trade practice under §§ 4-88-101 — 4-88-115 and may be enforced by the Attorney General.

(2) Each purchase, sale, or offer to sell cigarettes or other tobacco products in violation of subsection (a) of this section constitutes a separate violation.

History. Acts 1977, No. 546, § 23; 1979, No. 911, § 12; A.S.A. 1947, § 84-4523; Acts 2009, No. 655, § 75; 2011, No. 836, § 9; 2013, No. 1273, § 25.

Amendments. The 2009 amendment inserted "or" at the end of (1).

The 2011 amendment added "Deceptive trade practice" at the end of the section heading; inserted "knowingly" in the introductory language of present (a); and added (b).

The 2013 amendment inserted "purchase" preceding "sale" in (b)(2).

26-57-247. Seizure, forfeiture, and disposition of tobacco products and other property.

(a) Cigarettes to which stamps have not been affixed as provided by law are subject to seizure and shall be held as evidence for prosecution.

(b) The Director of Arkansas Tobacco Control may seize and hold for disposition of the courts or the Arkansas Tobacco Control Board all tobacco products found in the possession of a person dealing in, or a consumer of, tobacco products if:

(1) Prima facie evidence exists that the full amount of excise tax due on the tobacco products has not been paid to the Director of the Department of Finance and Administration;

(2) Tobacco products are in the possession of a wholesaler who does not possess a current Arkansas wholesale cigarette or tobacco permit;

(3) A retail establishment does not possess a current Arkansas retail cigarette and tobacco permit; or

(4) The tobacco products have been offered for sale to the public at another location without a current Arkansas retail cigarette and tobacco permit.

(c) Property, including money, used to facilitate a criminal violation of this subchapter or the Unfair Cigarette Sales Act, § 4-75-701 et seq., may be seized and forfeited to the state.

(d)(1) A prosecuting attorney may institute a civil action against a person who is convicted of a criminal violation under this subchapter or the Unfair Cigarette Sales Act, § 4-75-701 et seq., to obtain a judgment for:

(A) Damages in an amount equal to the value of the property, funds, or a monetary instrument involved in the violation;

(B) The proceeds acquired by a person involved in the enterprise or by reason of conduct in furtherance of the violation; and

(C) Costs incurred by the board in the investigation and prosecution of both criminal and civil proceedings.

(2) The standard of proof in an action brought under subdivision (d)(1) of this section is preponderance of the evidence.

(e) The following are subject to forfeiture under this section upon order by a circuit court:

(1) Tobacco products distributed, dispensed, or acquired in violation of this subchapter;

(2) Raw materials, products, or equipment used or intended for use in manufacturing, compounding, processing, delivering, importing, or exporting a tobacco product in violation of this subchapter;

(3) Property that is used or intended for use as a container for property described in subdivision (e)(1) or (2) of this section;

(4)(A) Except as provided in subdivision (e)(4)(B) of this section, a conveyance, including an aircraft, vehicle, or vessel, that is used or intended to be used to transport or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in subdivision (e)(1) or (2) of this section.

(B)(i) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this subchapter.

(ii) A conveyance is not subject to forfeiture under this section by reason of an act or omission established by the owner of the conveyance to have been committed or omitted without his or her knowledge or consent.

(C) Upon a showing described in subdivision (e)(4)(B)(i) of this section by the owner or interest holder of a conveyance, the conveyance may nevertheless be forfeited if the prosecuting attorney establishes that the owner or interest holder either knew or should reasonably have known that the conveyance would be used to transport or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in subdivision (e)(1) or (2) of this section.

(D) A conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to an act or omission in violation of this subchapter;

(5) A book, record, or research product or material, including a formula, microfilm, tape, or data that is used or intended for use in violation of this subchapter;

(6)(A) Except as provided in subdivision (e)(6)(B) of this section, a thing of value, including:

(i) Firearms furnished or intended to be furnished in exchange for a tobacco product in violation of this subchapter;

(ii) Proceeds or profits traceable to an exchange described in subdivision (e)(6)(A)(i) of this section; and

(iii) Money, negotiable instruments, or security used or intended to be used to facilitate a violation of this subchapter.

(B) Property shall not be forfeited under subdivision (e)(6)(A) of this section to the extent of the interest of an owner by reason of an act or omission established by him or her by a preponderance of the evidence to have been committed or omitted without his or her knowledge or consent;

(7)(A) Money, coins, or currency found in close proximity to a forfeitable tobacco product or a forfeitable record of an importation of a tobacco product is presumed to be forfeitable under this section.

(B) The burden of proof is upon a claimant of the money, coins, or currency to rebut the presumption in subdivision (e)(7)(A) of this section by a preponderance of the evidence; and

(8)(A) Except as provided in subdivision (e)(8)(B) of this section, real property if it substantially assisted in, facilitated in any manner, or was used or intended for use in the commission of any act prohibited by this subchapter.

(B)(i) Real property is not subject to forfeiture under this section by reason of an act or omission established by the owner of the real property by a preponderance of the evidence to have been committed or omitted without his or her knowledge or consent.

(ii) A forfeiture of real property encumbered by a mortgage or other lien is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to an act or omission in violation of this subchapter.

(iii) If the circuit court finds by a preponderance of the evidence that grounds for a forfeiture exist under this section, the court shall enter an order requiring the forfeiture of the real property.

(C) Upon an order of forfeiture of real property, the order shall be filed on the day issued and shall have prospective effect.

(D) A forfeiture of real property does not affect the title of a bona fide purchaser who purchased the real property before the issuance of the order, and the order has no force or effect on the title of the bona fide purchaser.

(E) A lis pendens filed in connection with an action pending under this section that may result in the forfeiture of real property is effective only from the time filed and has no retroactive effect.

(f) A tobacco product that is possessed, transferred, sold, or offered for sale in violation of this subchapter may be seized and immediately forfeited to the state.

(g)(1) Property subject to forfeiture under this subchapter may be seized by a law enforcement agent upon process issued by a circuit court having jurisdiction over the property on petition filed by the prosecuting attorney of the judicial circuit.

(2) Seizure without process may be made if:

(A) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(B) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this subchapter;

(C) The seizing law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(D) The seizing law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this subchapter.

(h)(1) A state or local law enforcement agency shall not transfer property seized by the state or local agency under this section to a federal entity for forfeiture under federal law unless the circuit court having jurisdiction over the property enters an order, upon petition by the prosecuting attorney, authorizing the property to be transferred to the federal entity.

(2) The transfer shall not be approved unless it reasonably appears that the activity giving rise to the investigation or seizure involves more than one (1) state or the nature of the investigation or seizure would be better pursued under federal law.

(i)(1) Property seized for forfeiture under this section is not subject to replevin but is deemed to be in the custody of the seizing law enforcement agency subject only to an order or decree of the circuit court having jurisdiction over the property seized.

(2) Subject to a need to retain the property as evidence, when property is seized under this subchapter, the seizing law enforcement agency may:

(A) Remove the property to a place designated by the circuit court;

(B) Place the property under constructive seizure, posting notice of pending forfeiture on it by:

(i) Giving notice of pending forfeiture to its owners and interest holders; or

(ii) Filing notice of pending forfeiture in an appropriate public record relating to the property;

(C) Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money or is not needed for evidentiary purposes, deposit it into an interest-bearing account; or

(D) Provide for another agency or custodian, including an owner, secured party, mortgagee, or lienholder, to take custody of the property and service, maintain, and operate it as reasonably necessary to maintain its value in an appropriate location within the jurisdiction of the court.

(3)(A) In case of transfer of property, a transfer receipt shall be prepared by the transferring agency.

(B) The transfer receipt shall:

(i) List a detailed and complete description of the property being transferred;

(ii) State to whom the property is being transferred and the source or authorization for the transfer; and

(iii) Be signed by both the transferor and the transferee.

(C) Both transferor and transferee shall maintain a copy of the transfer receipt.

(4) A person who acts as custodian of property under this section is not liable to any person on account of an act done in a reasonable manner in compliance with an order under this subchapter.

(j)(1) Property seized by a state or local law enforcement officer under this section who is detached to, deputized or commissioned by, or working in conjunction with a federal agency remains subject to this section.

(2)(A) If property is seized for forfeiture by a law enforcement agency under this section, the seizing law enforcement officer shall prepare and sign a confiscation report.

(B)(i) The party from whom the property is seized shall also sign the confiscation report if present and shall immediately receive a copy of the confiscation report.

(ii) If the party refuses to sign the confiscation report, the confiscation report shall be signed by one (1) additional law enforcement officer, stating that the party refused to sign the confiscation report.

(C) The original confiscation report shall be:

(i) Filed with the seizing law enforcement agency within forty-eight (48) hours after the seizure; and

(ii) Maintained in a separate file.

(D) One (1) copy of the confiscation report shall be retained by the seizing law enforcement officer.

(3) The confiscation report shall contain the following information:

(A) A detailed description of the property seized including serial or model numbers and odometer or hour reading of vehicles or equipment;

(B) The date of seizure;

(C) The name and address of the party from whom the property was seized;

(D) The reason for the seizure;

(E) The location where the property will be held;

(F) The seizing law enforcement officer's name; and

(G) A signed statement by the seizing law enforcement officer stating that the confiscation report is true and complete.

(4) Within three (3) business days after receiving the confiscation report, the seizing law enforcement agency shall forward a copy of the confiscation report to the prosecuting attorney for the district where the property was seized and to the Director of Arkansas Tobacco Control.

(5)(A) The Division of Legislative Audit shall notify the Director of Arkansas Tobacco Control and a circuit court in the county of a law enforcement agency, prosecuting attorney, or other public entity that the law enforcement agency, prosecuting attorney, or public entity is ineligible to receive forfeited funds, forfeited property, or grants from the council, if the Division of Legislative Audit determines by its own investigation or upon written notice from the Director of Arkansas Tobacco Control that:

(i) The law enforcement agency failed to complete and file the confiscation reports as required by this section;

(ii) The law enforcement agency, prosecuting attorney, or public entity has not properly accounted for the seized property; or

(iii) The prosecuting attorney has failed to comply with the notification requirement set forth in subdivision (m)(2) of this section.

(B) After the notice, the circuit court shall not issue an order distributing seized property to that law enforcement agency, prosecuting attorney, or public entity, nor shall a grant be awarded by the council to that law enforcement agency, prosecuting attorney, or public entity until:

(i) The appropriate officials of the law enforcement agency, prosecuting attorney, or public entity have appeared before the Legislative Joint Auditing Committee; and

(ii) The Legislative Joint Auditing Committee has adopted a motion authorizing subsequent transfers of forfeited property to the law enforcement agency, prosecuting attorney, or public entity.

(C)(i) If a law enforcement agency, prosecuting attorney, or other public entity is ineligible to receive forfeited property, the circuit court shall order money that would have been distributed to that law enforcement agency, prosecuting attorney, or public entity to be transmitted to the Treasurer of State for deposit into the Special State Assets Forfeiture Fund.

(ii) If the property is not cash, the circuit court shall order the property converted to cash under this section and the proceeds transmitted to the Treasurer of State for deposit into the Special State Assets Forfeiture Fund.

(D) Moneys deposited into the Special State Assets Forfeiture Fund are not subject to recovery or retrieval by an ineligible law enforcement agency, prosecuting attorney, or other public entity.

(6) The Director of Arkansas Tobacco Control shall establish by rule a standardized confiscation report form to be used by all law enforcement agencies, with specific instructions and guidelines concerning the nature and dollar value of all property, including firearms, to be included in the confiscation report and forwarded to the office of the local prosecuting attorney and the Director of Arkansas Tobacco Control under this subsection.

(k)(1)(A) The prosecuting attorney shall initiate forfeiture proceedings by filing a complaint with the circuit clerk of the county where the property was seized and by serving the complaint on all known owners and interest holders of the seized property in accordance with the Arkansas Rules of Civil Procedure.

(B) The complaint may be based on in rem or in personam jurisdiction but shall not be filed to avoid the distribution requirements set forth in subdivision (l)(1) of this section.

(C) The prosecuting attorney shall mail a copy of the complaint to the Director of Arkansas Tobacco Control within five (5) calendar days after filing the complaint.

(2)(A) The complaint shall include a copy of the confiscation report and shall be filed within sixty (60) days after receiving a copy of the confiscation report from the seizing law enforcement agency.

(B) In a case involving real property, the complaint shall be filed within sixty (60) days of the defendant's conviction on the charge giving rise to the forfeiture.

(3)(A) The prosecuting attorney may file the complaint after the expiration of the time only if the complaint is accompanied by a statement of good cause for the late filing.

(B) However, the complaint shall not be filed more than one hundred twenty (120) days after either the date of the seizure or, in a case involving real property, the date of the defendant's conviction.

(C)(i) If the circuit court determines that good cause has not been established, the circuit court shall order that the seized property be returned to the owner or interest holder.

(ii) In addition, items seized but not subject to forfeiture under this section or subject to disposition under law or the Arkansas Rules of Criminal Procedure may be ordered returned to the owner or interest holder.

(iii) If the owner or interest holder cannot be determined, the court may order disposition of the property.

(4) Within the time set forth in the Arkansas Rules of Civil Procedure, the owner or interest holder of the seized property shall file with the circuit clerk a verified answer to the complaint that shall include:

(A) A statement describing the seized property and the owner's interest or interest holder's interest in the seized property with supporting documents to establish the owner's interest or interest holder's interest;

(B) A certification by the owner or interest holder stating that he or she has read the document and that it has not been filed for an improper purpose;

(C) A statement setting forth any defense to forfeiture; and

(D) The address at which the owner or interest holder will accept mail.

(5)(A) If the owner or interest holder fails to file an answer, the prosecuting attorney may move for default judgment under the Arkansas Rules of Civil Procedure.

(B)(i) If a timely answer has been filed, the prosecuting attorney has the burden of proving by a preponderance of the evidence that the seized property should be forfeited.

(ii) After the prosecuting attorney has presented proof, an owner or interest holder of the property seized is allowed to present evidence showing why the seized property should not be forfeited.

(iii) If the circuit court determines that grounds for forfeiting the seized property exist and that a defense to forfeiture has not been established by the owner or interest holder, the circuit court shall enter an order under this section. However, if the circuit court determines either that the prosecuting attorney has failed to establish that grounds for forfeiting the seized property exist or that the owner or interest holder has established a defense to forfeiture, the court shall order that the seized property be immediately returned to the owner or interest holder.

(l)(1) If the circuit court having jurisdiction over the seized property finds upon a hearing by a preponderance of the evidence that grounds

for a forfeiture exist under this subchapter, the circuit court shall enter an order:

(A) To permit the law enforcement agency or prosecuting attorney to retain the seized property for law enforcement or prosecutorial purposes, subject to the following provisions:

(i)*(a)* Seized property may not be retained for official use for more than three (3) years, unless the circuit court finds that the seized property has been used for law enforcement or prosecutorial purposes and authorizes continued use for those purposes on an annual basis.

(b) At the end of the retention period, the seized property shall be sold and eighty percent (80%) of the proceeds shall be deposited into the tobacco control fund of the retaining law enforcement agency or prosecuting attorney, and twenty percent (20%) of the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Special State Assets Forfeiture Fund.

(c) The retaining law enforcement agency or prosecuting attorney may sell the retained seized property during the time allowed for retention. However, the proceeds of the sale shall be distributed as set forth in subdivision (l)(1)(A)(i)(*b*) of this section;

(ii) If the circuit court determines that retained seized property has been used for personal use or by non-law enforcement personnel for non-law enforcement purposes, the circuit court shall order the seized property to be sold under § 5-5-101(e) and (f), and the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Special State Assets Forfeiture Fund;

(iii)*(a)* A law enforcement agency may use forfeited property or money if the circuit court's order specifies that the forfeited property or money is forfeited to the prosecuting attorney, sheriff, chief of police, Department of Arkansas State Police, Director of Arkansas Tobacco Control, or Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department.

(b) After the order, the prosecuting attorney, sheriff, chief of police, Department of Arkansas State Police, Director of Arkansas Tobacco Control, or Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department shall maintain an inventory of the forfeited property or money, be accountable for the forfeited property or money, and be subject to subdivision (j)(5) of this section with respect to the forfeited property or money;

(iv)*(a)* An aircraft is forfeited to the office of the Director of Arkansas Tobacco Control and may be used only for tobacco smuggling interdiction efforts within the discretion of the Director of Arkansas Tobacco Control.

(b) However, if the Director of Arkansas Tobacco Control determines that the aircraft should be sold, the sale shall be conducted under § 5-5-101(e) and (f), and the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Special State Assets Forfeiture Fund;

(v) A firearm not retained for official use shall be disposed of in accordance with state and federal law; and

(vi) A tobacco product shall be destroyed pursuant to a court order;

(B)(i) To sell seized property that is not required by law to be destroyed and that is not harmful to the public.

(ii) Seized property described in subdivision (l)(1)(B)(i) of this section shall be sold at a public sale by the retaining law enforcement agency or prosecuting attorney under § 5-5-101(e) and (f); or

(C) To transfer a motor vehicle to a school district for use in a driver education course.

(2) Disposition of forfeited property under this subsection is subject to the need to retain the forfeited property as evidence in any related proceeding.

(3) Within three (3) business days after the entry of the order, the circuit clerk shall forward to the Director of Arkansas Tobacco Control copies of the confiscation report, the circuit court's order, and other documentation detailing the disposition of the seized property.

(m)(1)(A) Subject to subdivision (j)(5) of this section, the proceeds of sales conducted under this section and moneys forfeited or obtained by judgment or settlement under this subchapter shall be deposited and distributed in the manner provided in this subsection.

(B) Moneys received from a federal forfeiture for a violation of this subchapter shall be deposited and distributed under this section.

(2)(A) The proceeds of a sale and moneys forfeited or obtained by judgment or settlement under this subchapter shall be deposited into the asset forfeiture fund of the prosecuting attorney and is subject to the following provisions:

(i) If, during a calendar year, the aggregate amount of moneys deposited in the asset forfeiture fund exceeds twenty thousand dollars ($20,000) per county, the prosecuting attorney, within fourteen (14) days after that time, shall notify the circuit judges in the judicial district and the Director of Arkansas Tobacco Control;

(ii) Subsequent to the notification set forth in this section, twenty percent (20%) of the proceeds of an additional sale and additional moneys forfeited or obtained by judgment or settlement under this subchapter in the same calendar year shall be deposited into the State Treasury as special revenues to be credited to the Special State Assets Forfeiture Fund, and the remainder shall be deposited into the asset forfeiture fund of the prosecuting attorney;

(iii) Failure by the prosecuting attorney to comply with the notification requirement set forth in this section renders the prosecuting attorney and an entity eligible to receive forfeited moneys or property from the prosecuting attorney ineligible to receive forfeited moneys or property, except as provided in this section; and

(iv) Twenty percent (20%) of moneys in excess of twenty thousand dollars ($20,000) that have been retained but not reported as required by this section are subject to recovery for deposit into the Special State Assets Forfeiture Fund.

(B) The prosecuting attorney shall administer expenditures from the asset forfeiture fund, which is subject to audit by the Division of

Legislative Audit. Moneys distributed from the asset forfeiture fund shall be used only for law enforcement and prosecutorial purposes. Moneys in the asset forfeiture fund shall be distributed in the following order:

(i) For the satisfaction of a bona fide security interest or lien;

(ii) For payment of a proper expense of the proceeding for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs;

(iii) Any balance under three hundred fifty thousand dollars ($350,000) shall be distributed proportionally so as to reflect generally the contribution of the appropriate local or state law enforcement or prosecutorial agency's participation in any activity that led to the seizure or forfeiture of the property or deposit of moneys under this subchapter; and

(iv) Any balance over three hundred fifty thousand dollars ($350,000) shall be forwarded to the Director of Arkansas Tobacco Control to be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund for distribution under this section.

(C)(i) For a forfeiture in an amount greater than three hundred fifty thousand dollars ($350,000) from which expenses are paid for a proceeding for forfeiture and sale under this section, an itemized accounting of the expenses shall be delivered to the Director of Arkansas Tobacco Control within ten (10) calendar days after the distribution of the funds.

(ii) The itemized accounting shall include the expenses paid, to whom paid, and for what purposes the expenses were paid.

(3)(A) Moneys received by a prosecuting attorney or law enforcement agency from a federal forfeiture for a violation of this subchapter shall be deposited and maintained in a separate account.

(B) However, a balance over three hundred fifty thousand dollars ($350,000) shall be distributed as required under this section.

(4) Other moneys shall not be maintained in the account except for interest income generated by the account.

(5) Moneys in the account shall only be used for law enforcement and prosecutorial purposes consistent with governing federal law.

(6) The account is subject to audit by the Division of Legislative Audit.

(7) A balance over three hundred fifty thousand dollars ($350,000) shall be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund in which it shall be maintained separately and distributed consistently with governing federal law and upon the advice of the Director of Arkansas Tobacco Control.

(n) In personam jurisdiction may be based on a person's presence in the state or on his or her conduct in the state, as set out in § 16-4-101C., and is subject to the following additional provisions:

(1) A temporary restraining order under this section may be entered ex parte on application of the state upon a showing that:

(A) There is probable cause to believe that the property with respect to which the order is sought is subject to forfeiture under this section; and

(B) Notice of the action would jeopardize the availability of the property for forfeiture;

(2)(A) Notice of the entry of a temporary restraining order and an opportunity for hearing shall be afforded to a person known to have an interest in the property.

(B) The hearing shall be held at the earliest possible date consistent with Rule 65 of the Arkansas Rules of Civil Procedure and is limited to the issues of whether:

(i) There is a probability that the state will prevail on the issue of forfeiture and that failure to enter the temporary restraining order will result in the property's being destroyed, conveyed, alienated, encumbered, disposed of, received, removed from the jurisdiction of the circuit court, concealed, or otherwise made unavailable for forfeiture; and

(ii) The need to preserve the availability of property through the entry of the requested temporary restraining order outweighs the hardship on an owner or interest holder against whom the temporary restraining order is to be entered;

(3) The state has the burden of proof by a preponderance of the evidence to show that the defendant's property is subject to forfeiture;

(4)(A) On a determination of liability of a person for conduct giving rise to forfeiture under this section, the circuit court shall enter a judgment of forfeiture of the property subject to forfeiture as alleged in the complaint and may authorize the prosecuting attorney or a law enforcement officer to seize property subject to forfeiture under this section not previously seized or not then under seizure.

(B) The order of forfeiture shall be consistent with subsection (l) of this section.

(C) In connection with the judgment, on application of the state, the circuit court may enter an appropriate order to protect the interest of the state in property ordered forfeited; and

(5) Subsequent to the finding of liability and order of forfeiture, the following procedures apply:

(A) The attorney for the state shall give notice of pending forfeiture in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure to an owner or interest holder who has not previously been given notice;

(B) An owner of or interest holder in property that has been ordered forfeited and whose claim is not precluded may file a claim within thirty (30) days after initial notice of pending forfeiture or after notice under Rule 4 of the Arkansas Rules of Civil Procedure, whichever is earlier; and

(C) The circuit court may amend the in personam order of forfeiture if the circuit court determines that a claimant has established that he or she has an interest in the property and that the interest is exempt under this section.

(o) The circuit court shall order the forfeiture of other property of a claimant or defendant up to the value of the claimant's or defendant's property found by the circuit court to be subject to forfeiture under this section if any of the forfeitable property had remained under the control or custody of the claimant or defendant and:

(1) Cannot be located;

(2) Was transferred or conveyed to, sold to, or deposited with a third party;

(3) Is beyond the jurisdiction of the circuit court;

(4) Was substantially diminished in value while not in the actual physical custody of the seizing law enforcement agency;

(5) Was commingled with other property that cannot be divided without difficulty; or

(6) Is subject to interest exempted from forfeiture under this subchapter.

(p)(1) There is created on the books of law enforcement agencies and prosecuting attorneys a tobacco control fund.

(2) The fund shall consist of moneys obtained under this section and other revenue as may be provided by law or ordinance.

(3) Moneys in the tobacco control fund shall be appropriated on a continuing basis and are not subject to the Revenue Stabilization Law, § 19-5-101 et seq.

(4)(A) The fund shall be used for law enforcement and prosecutorial purposes.

(B) Each prosecuting attorney shall submit to the Director of Arkansas Tobacco Control on or before June 30 of each year a report detailing moneys received and expenditures made from the tobacco control fund during the preceding twelve-month period.

(5) The law enforcement agencies and prosecuting attorneys shall submit to the Director of Arkansas Tobacco Control on or before June 30 of each year a report detailing any moneys received and expenditures made from the tobacco control fund during the preceding twelve-month period.

(6) Moneys from the tobacco control fund may not supplant other local, state, or federal funds.

(7) The tobacco control fund is subject to audit by the Division of Legislative Audit.

History. Acts 1977, No. 546, § 25; A.S.A. 1947, § 84-4525; Acts 1997, No. 1337, § 21; 2009, No. 785, § 22; 2009, No. 939, § 1; 2011, No. 983, § 18.

Amendments. The 2009 amendment by No. 785 substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (b).

The 2009 amendment by No. 939 rewrote the section heading, in (a), substituted "by law" for "in this subchapter" and made a minor stylistic change; rewrote (b); and added (c) through (p).

The 2011 amendment substituted "subdivision (m)(2)" for "subdivision (j)(4)" in (j)(5)(A)(iii).

26-57-248. Possession or sale of products with unpaid taxes — Supplemental fines.

(a) Any person who places in his or her stock or who has in his or her possession or on his or her premises, or who sells or offers for sale, any tobacco products on which the tax prescribed by law has not been paid in addition to the other fines and forfeitures may be subject to a fine of:

(1) Twenty-five dollars ($25.00) for each package of cigarettes, little cigars, and cigarillos up to twenty (20) packages and fifty dollars ($50.00) for each package in excess of twenty (20) packages, so held, sold, or offered for sale; and

(2) Fifty dollars ($50.00) for each box of cigars and twenty-five dollars ($25.00) for each unit of other tobacco products so held, sold, or offered for sale.

(b) The penalty shall be held to be in the nature of a civil penalty and may be collected by civil action and may be levied by the Arkansas Tobacco Control Board or any circuit court of this state.

(c) A fine assessed under this section shall be deposited into the tobacco control fund established under § 26-57-247(p).

History. Acts 1977, No. 546, § 27; 1985, No. 684, § 2; 1985, No. 824, § 2; A.S.A. 1947, § 84-4527; Acts 2009, No. 785, § 23; 2013, No. 1273, § 26.

Amendments. The 2009 amendment deleted "Liquidated damages" from the section heading; made a minor stylistic change in (a); and in (b), substituted "a civil penalty" for "liquidated damages" and added "and may be levied by the Arkansas Tobacco Control Board or any circuit court of this state."

The 2013 amendment added (c).

26-57-249. Destruction of products upon conviction — Procedure.

(a) Upon conviction of any person charged with a violation of any tobacco law or rule which resulted in the seizure of tobacco products, the court shall issue an order to destroy the tobacco products confiscated by the Director of Arkansas Tobacco Control or by any state, county, or municipal officer in this state.

(b) Upon a finding of guilty of any person charged with a violation of a state tobacco law or rule in a proceeding before the Arkansas Tobacco Control Board that resulted in the seizure of tobacco products, the Arkansas Tobacco Control Board shall issue an order to destroy the tobacco products confiscated by the director or by any state, county, or municipal officer in this state.

(c) Every court of record in this state shall notify the director of the disposition made of each case in the court as to whether the defendant was convicted or acquitted.

(d) Upon application of the director, the Arkansas Tobacco Control Board or the court issuing a destruction order may instead release the tobacco products to the use and benefit of Arkansas Tobacco Control for suitable law enforcement or training purposes.

History. Acts 1977, No. 546, § 34; A.S.A. 1947, § 84-4534; Acts 1997, No. 1337, § 22; 2001, No. 966, § 1; 2009, No. 785, § 24.

Amendments. The 2009 amendment substituted "Destruction" for "Sale" in the section heading; rewrote (a), inserted (b), redesignated the subsequent subsection, and added (d).

26-57-251. Civil actions brought in name of director — Criminal actions.

(a) All civil actions arising under this subchapter shall be brought by and in the name of the Director of the Department of Finance and Administration or the Director of Arkansas Tobacco Control, whichever is appropriate under the provisions of this subchapter.

(b) All criminal actions shall be brought and prosecuted by the proper prosecuting attorney.

History. Acts 1977, No. 546, § 32; A.S.A. 1947, § 84-4532; Acts 1997, No. 1337, § 22; 2009, No. 785, § 25.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (a).

26-57-252. No bond for costs required.

A bond for costs is not required of the Department of Finance and Administration, Arkansas Tobacco Control, or the Arkansas Tobacco Control Board in any court in this state for the prosecution of a violation of this subchapter.

History. Acts 1977, No. 546, § 33; A.S.A. 1947, § 84-4533; Acts 1997, No. 1337, § 22; 2013, No. 1273, § 27.

Amendments. The 2013 amendment substituted "A bond for costs is not required" for "No bond for costs shall be required" and inserted "Arkansas Tobacco Control."

26-57-255. Arkansas Tobacco Control Board.

(a) There is hereby created the Arkansas Tobacco Control Board to consist of eight (8) members appointed by the Governor. The board shall be constituted as follows:

(1) Two (2) members of the board shall be tobacco products wholesalers;

(2) Two (2) members of the board shall be tobacco products retailers; and

(3) Four (4) members of the board shall be members of the public at large who are not public employees or officials, at least one (1) of whom shall be an African American, and two (2) of whom shall be selected from a list of at least eight (8) candidates supplied to the Governor by the Arkansas Medical Society.

(b) The Governor shall designate which member of the board shall act as chair and that person shall serve as chair for two (2) years unless his or her membership on the board ceases prior to the end of the two-year period.

(c)(1) All members of the board must be residents of the State of Arkansas and confirmed by the Senate.

(2) The term of office shall be five (5) years, except that the initial board shall be appointed to staggered terms in that the term of one (1) member expires each year.

(d)(1) The board shall :

(A) Act as a rulemaking and adjudicatory body for Arkansas Tobacco Control; and

(B) Have responsibility for the issuance, suspension, and revocation of the licenses and permits enumerated in § 26-57-219.

(2)(A) A minimum of five (5) members is required for a quorum.

(B) All action by the board shall be by a majority vote of the board members present at the regular or special meeting, and the board may take no official action in connection with a matter except at a regular or special meeting. In the event of a tie vote of the members of the board, the Director of Arkansas Tobacco Control may cast the deciding vote.

(e) No person who is not a citizen of the United States and who has not resided in the State of Arkansas for at least two (2) consecutive years immediately preceding the date of appointment may be appointed to the board nor employed by the board.

(f) Each member of the board and the director shall take and subscribe to an oath that he or she will support and enforce the provisions of this subchapter, the tobacco control laws of this state, the Arkansas Constitution, and the United States Constitution.

History. Acts 1997, No. 1337, § 23; 2009, No. 785, § 26; 2013, No. 1273, § 28.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (d)(2).

The 2013 amendment subdivided (d)(1) into present (d)(1)(A) and (d)(1)(B); inserted (d)(2)(A); substituted "board members present at the regular or special meeting" for "full membership of the board" in (d)(2)(B); and deleted (d)(3).

26-57-256. Powers of the Arkansas Tobacco Control Board.

(a) The Arkansas Tobacco Control Board shall:

(1) Promulgate rules for the proper enforcement and implementation of this subchapter and the Unfair Cigarette Sales Act, § 4-75-701 et seq.;

(2) Receive applications for and issue, refuse, suspend, and revoke licenses and permits listed in § 26-57-219;

(3) Prescribe forms of applications for permits and licenses under this subchapter;

(4)(A) Cooperate with the Revenue Division of the Department of Finance and Administration in the enforcement of the tax laws affecting the sale of tobacco products in this state and in the enforcement of all other state and local tax laws.

(B) To facilitate efforts to cooperate with the division concerning the enforcement of all other state and local tax laws, the board shall

immediately require that the following additional information be provided by all applicants for permit issuance or renewal:

(i) Federal tax identification numbers issued by the Internal Revenue Service;

(ii) Social Security numbers; and

(iii) State sales tax account numbers assigned by the Department of Finance and Administration, if applicable.

(C)(i) Each year the board shall provide a list of all applicants for the issuance or renewal of all tobacco permits and licenses to the Director of the Department of Finance and Administration.

(ii) This list shall contain the identifying information required by subdivision (a)(4)(B) of this section as well as the name of the permittee and the permittee's current business address;

(5)(A) Conduct public hearings when appropriate regarding any permit and license authorized by this subchapter or in violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-701 et seq., § 5-27-227, or any other federal, state, or local statute, ordinance, rule, or regulation concerning the sale of tobacco products to minors or the rules promulgated by the board.

(B)(i) After a notice and hearing held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board finds a violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-701 et seq., or the rules promulgated by the board, the board may suspend, revoke, or not renew any or all permits and licenses issued by the board to any person or entity.

(ii) In addition, the board may levy a civil penalty in an amount not to exceed five thousand dollars ($5,000) for each violation against any person or entity found to be in violation.

(iii) Each day of the violation shall be deemed a separate violation.

(C) In that regard, the board may examine or cause to be examined under oath any witness and the books and records of any licensee, person, or entity; and

(6) When requested by the written petition of at least three (3) interested parties, conduct public hearings to receive testimony on the facts relevant to the issuance of any license or permit under this subchapter.

(b) Unless the civil penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the Director of Arkansas Tobacco Control shall have the power to institute a civil action in the Pulaski County Circuit Court to recover the civil penalties assessed pursuant to the provisions of this subchapter.

(c)(1) The board shall have no authority in criminal prosecutions or the assessment or collection of any taxes related to the taxing of tobacco products.

(2) However, the board shall refuse to issue, suspend, revoke, or refuse renewal of any permit or license issued by the board for the failure to pay taxes or fees imposed on tobacco products or any permit or license fees imposed by this subchapter or any other state and local taxes.

(d) The board may assess penalties for a violation of § 5-27-227 according to the following schedule:

(1) If the alleged violator has received a notice of an alleged violation from the board or other agency or official with the authority to assess penalties containing the information specified in this subchapter, a civil penalty not to exceed two hundred fifty dollars ($250) for a first violation within a forty-eight-month period;

(2) A civil penalty not to exceed five hundred dollars ($500) for a second violation within a forty-eight-month period and suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed two (2) days;

(3) A civil penalty not to exceed one thousand dollars ($1,000) for a third violation within a forty-eight-month period and suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed seven (7) days;

(4) A civil penalty not to exceed two thousand dollars ($2,000) for a fourth or subsequent violation within a forty-eight-month period and suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed fourteen (14) days; and

(5) For a fifth or subsequent violation within a forty-eight-month period, in addition to any civil penalties authorized by this section, the license or permit under § 26-57-219 may be revoked.

(e)(1) A notice of an alleged violation of § 5-27-227 shall be given to the holder of a retail permit or license within ten (10) days of the alleged violation.

(2) The notice shall contain the date and time of the alleged violation.

(3)(A) The notice shall also include either the name of the person making the alleged unlawful sale or information reasonably necessary to determine the location in the store where the alleged unlawful sale was made.

(B) Information under subdivision (e)(3)(A) of this section shall include when appropriate without limitation, the cash register number, physical location of the sale in the store, and, if possible, the lane or aisle number.

(f) The board shall consider the following factors when reviewing a possible violation:

(1) The business has adopted and enforced a written policy against selling cigarettes or tobacco products to persons less than eighteen (18) years of age;

(2) The business has informed its employees of the applicable laws regarding the sale of cigarettes and tobacco products to persons less than eighteen (18) years of age;

(3) The business required employees to verify the age of cigarette or tobacco product customers by way of photographic identification;

(4) The business has established and imposed disciplinary sanctions for noncompliance; and

(5) The appearance of the purchaser of the tobacco in any form or cigarette papers was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase.

(g)(1) A penalty under subsection (d) of this section for a violation of § 5-27-227 shall not be imposed upon a retailer or agent or employee of a retailer who can establish an affirmative defense that before the date of the violation the retailer or agent or employee of the retailer furnishing the tobacco in any form or cigarette papers reasonably relied upon proof of age that identified the person receiving the tobacco in any form or cigarette papers as being eighteen (18) years of age or older.

(2) As used in this section, "proof of age" means any document issued by a governmental agency containing a description of the person or the person's photograph, or both, and giving the person's date of birth and includes without limitation a passport, military identification card, or driver's license.

(h) Any cigarettes or tobacco products found in the possession of a person less than eighteen (18) years of age may be confiscated.

(i) An employee of a permit holder who violates § 5-27-227 is subject to a civil penalty not to exceed one hundred dollars ($100) per violation.

(j)(1) For a corporation or business with more than one (1) retail location, to determine the number of accumulated violations for purposes of the penalty schedule set forth in subsection (d) of this section, violations of § 5-27-227 by one (1) retail location shall not be accumulated against other retail locations of that same corporation or business.

(2) For a retail location, for purposes of the penalty schedule set forth in subsection (d) of this section, violations accumulated and assessed against a prior owner of the retail location shall not be accumulated against a new owner of the same retail location.

(k) All penalties collected under this section shall be deposited into the State Treasury.

History. Acts 1997, No. 1337, § 23; 1999, No. 1591, § 4; 2001, No. 1368, §§ 3, 4; 2009, No. 655, § 76; 2009, No. 785, § 27; 2013, No. 1273, § 29.

A.C.R.C. Notes. The amendment to this section by Acts 2009, No. 655, § 76, is superseded by the amendment to § 5-27-227 by Acts 2009, No. 785, § 6, pursuant to Acts 2009, No. 748, § 45, Acts 2009, No. 655, § 128, and § 1-2-207(b).

Amendments. The 2009 amendment by No. 785 substituted "rules" for "regulations" in (a)(1), deleted "and regulations" following "rules" in (a)(5)(A) and (a)(5)(B)(i), and substituted "five thousand dollars ($5,000)" for "one thousand dollars ($1,000)" in (a)(5)(B)(ii); substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (b); deleted "or penalties" following "taxes" in (c)(1); and added (d) through (k).

The 2013 amendment deleted "subject to the restrictions in § 26-57-212(d)" at the end of (a)(1).

26-57-257. Director of Arkansas Tobacco Control.

(a)(1) The Governor shall employ a person to serve as Director of Arkansas Tobacco Control.

(2) The Director of Arkansas Tobacco Control shall serve at the pleasure of the Governor.

(b) The Director of Arkansas Tobacco Control shall present all evidence tending to prove violations of law or regulations at hearings held by the Arkansas Tobacco Control Board.

(c) The Director of Arkansas Tobacco Control may employ other personnel as he or she deems necessary and as authorized by the General Assembly.

(d) Any personnel employed by the Director of Arkansas Tobacco Control shall serve at his or her pleasure.

(e)(1) The Director of Arkansas Tobacco Control and the board each may adopt, keep, and use a common seal.

(2) This seal shall be used for authentication of the records, process, and proceedings of the Director of Arkansas Tobacco Control and the board, respectively.

(3) Judicial notice shall be taken of each use of this seal in all of the courts of the state.

(f) Any process, notice, or other paper that the Director of Arkansas Tobacco Control may be authorized by law to issue shall be deemed sufficient if signed by the Director of Arkansas Tobacco Control and authenticated by the seal of the Director of Arkansas Tobacco Control.

(g) Any process, notice, or other paper that the board may be authorized by law to issue shall be deemed sufficient if signed by the chair of the Arkansas Tobacco Control Board and authenticated by the seal of the board.

(h) All acts, orders, proceedings, rules, regulations, entries, minutes, and other records of the Director of Arkansas Tobacco Control and all reports and documents filed with the Director of Arkansas Tobacco Control may be proved in any court of this state by a copy thereof certified to by the Director of Arkansas Tobacco Control with the seal of the Director of Arkansas Tobacco Control attached.

(i) All acts, orders, proceedings, rules, entries, minutes, and other records of the board and all reports and documents filed with the Director of Arkansas Tobacco Control may be proved in any court of this state by a copy thereof certified to by the chair of the board with the seal of the board attached.

(j)(1) The Director of Arkansas Tobacco Control shall maintain records of all permits and licenses issued, suspended, denied, or revoked by the board.

(2) The records shall be in such form as to provide ready information as to the identity of the licensees, including the names of major stockholders and directors of corporations holding licenses or permits and the location of the licensed or permitted premises.

(k) The Director of Arkansas Tobacco Control shall recognize the Division of Behavioral Health Services as the agency responsible for ensuring full compliance with the Public Health Service Act, § 1926(b), 42 U.S.C. § 300x-26(b), and shall call upon administrative departments of the state, county, and city governments, sheriffs, city police departments, or other law enforcement officers for such information and assistance as the Director of Arkansas Tobacco Control may deem necessary in the performance of the duties imposed upon him or her by this subchapter.

(l) The Director of Arkansas Tobacco Control may inspect or cause to be inspected any premises where tobacco products are manufactured, imported, distributed, stored, or sold.

(m) The Director of Arkansas Tobacco Control may:

(1) Examine or cause to be examined any person under oath and examine or cause to be examined books and records of any licensee;

(2) Hear testimony and take proof material to his or her information and the discharge of his or her duties under this section;

(3) Administer oaths or cause oaths to be administered; and

(4)(A) Issue subpoenas to require the attendance of witnesses and the production of books and records.

(B) Any circuit court by written order may require the attendance of witnesses or the production of relevant books or other records subpoenaed by the Director of Arkansas Tobacco Control, and the court may compel obedience to its order by proceedings for contempt.

(n) All hearings and appeals from any hearing shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(o) The Director of Arkansas Tobacco Control shall exercise other powers, functions, and duties as are or may be imposed or conferred upon him or her by law or the board.

(p) The Director of Arkansas Tobacco Control shall have other powers, functions, and duties pertaining to the issuance, suspension, and revocation of the permits and licenses enumerated in § 26-57-219 that previously were granted to the Director of the Department of Finance and Administration, except those that are specifically delegated to the Department of Finance and Administration by this subchapter.

(q)(1)(A) The power and duty to collect taxes imposed on tobacco and tobacco products is specifically exempted from the powers and duties granted or assigned to the board or the director.

(B) However, a permit or license holder's failure to pay taxes or fees imposed on tobacco products or any permit or license fees imposed by this subchapter in a timely manner is grounds for the nonissuance, suspension, revocation, or nonrenewal of any permits or licenses issued by the board.

(C) Failure to timely and fully pay any other state and local taxes as reported by the Director of the Department of Finance and Administration shall also constitute grounds for the nonissuance, suspension, revocation, or nonrenewal of any permits or licenses issued by the board.

(2)(A) Each year the Director of the Department of Finance and Administration shall report to the Director of Arkansas Tobacco Control all permit and license holders who are more than ninety (90) days delinquent on any state and local taxes.

(B) The Director of Arkansas Tobacco Control shall not issue or renew any permit or license issued under this section for any permit or license holder more than ninety (90) days delinquent on any

privilege fee or tax addressed in this section unless the permittee or licensee demonstrates that he or she is current under a valid repayment agreement for the delinquent tax.

(3)(A) Each year the Director of Arkansas Tobacco Control shall send notices to all permit and license holders more than ninety (90) days delinquent on any state and local taxes.

(B) This notice shall inform the permit or license holder that he or she is delinquent on payment of state and local taxes due the Director of the Department of Finance and Administration and that the permit or license holder will be unable to obtain or renew the permit or license that he or she holds until such time as the person becomes current in the payment of the tax due the Director of the Department of Finance and Administration, or until such time as the person enters into a valid repayment agreement with the department for the payment of the delinquent tax.

(r) The enforcement of state laws relating to the prohibition of the barter or sale of tobacco in any form or cigarette papers to minors by multiple state agencies shall be coordinated to avoid duplicative inspections of the same retailer by multiple state agencies.

History. Acts 1997, No. 1337, § 23; 1999, No. 1591, § 2; 2001, No. 1368, § 5; 2009, No. 655, §§ 77–83; 2009, No. 785, § 28; 2011, No. 983, § 19; 2013, No. 1107, § 47; 2013, No. 1273, §§ 30–32.

A.C.R.C. Notes. The amendments to this section by Acts 2009, No. 655, §§ 77-83, are superseded by the amendments to this section by Acts 2009, No. 785, § 28, and the amendments to § 5-27-227 by Acts 2009, No. 785, § 6, pursuant to Acts 2009, No. 748, § 45, Acts 2009, No. 655, § 128, and § 1-2-207(b).

Amendments. The 2009 amendment by No. 785 substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" throughout the section; deleted "regulations" following "rules" in (i); deleted "In the conduct of any hearings" at the beginning of (m); substituted "Director of Arkansas Tobacco Control" for "board" in (q)(2)(A), (q)(2)(B), and (q)(3)(A); deleted (r) through (aa) and (cc) and redesignated (bb) as present (r); and made related changes.

The 2011 amendment substituted "director" for "department" in (q)(1)(A).

The 2013 amendment by No. 1107 substituted "Division of Behavioral Health Services" for "Office of Alcohol and Drug Abuse Prevention" in (k).

The 2013 amendment by No. 1273, in (c), deleted "such" following "may employ" and "subject to the approval of the board" following "deems necessary"; inserted "manufactured, imported" in (l); and substituted "those that" for "the authority to regulate manufacturers, and which" in (p).

26-57-259. Nonpreemption.

(a) This act and the rules, regulations, and other actions of the Arkansas Tobacco Control Board shall not be construed or interpreted so as to preempt or in any other manner qualify or limit the enactment and enforcement of any federal, state, county, municipal, or other local regulation of the manufacture, sale, storage, or distribution of tobacco products that is more restrictive than this act or the rules and regulations promulgated by the board.

(b) This act and the rules, regulations, and other actions of the board shall not be construed or interpreted so as to preempt or otherwise limit

any legal or equitable claims or causes of action brought under the common law or any federal or state statutes.

(c) Nothing in this act nor any rule or regulation of the board shall be construed or interpreted so as to require any state, county, municipal, or other local authority to exhaust any administrative remedies through the board, including without limitation the right to seize and forward to the board the state license of any vendor or retailer found to have illegally sold tobacco products to a person less than eighteen (18) years of age, provided that the vendor or retailer shall be given a hearing before the board at the board's next regularly scheduled meeting.

History. Acts 1997, No. 1337, § 26; 2013, No. 1273, § 33.

Amendments. The 2013 amendment, in (c), substituted "without limitation" for "but not limited to" and "at the board's next regularly scheduled meeting" for "within five (5) business days of the seizure."

26-57-260. Definitions.

As used in this section and § 26-57-261:

(1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement;

(2)(A) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another person.

(B) Solely for the purposes of the definition of "affiliate", the term:

(i) "Owns", "is owned", and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more; and

(ii) "Person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons;

(3) "Allocable share" means the allocable share as that term is defined in the Master Settlement Agreement;

(4)(A) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(i) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) Tobacco in any form that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette; or

(iii) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette described in subdivision (4)(A)(i) of this section.

(B) "Cigarette" includes "roll-your-own", that is, any tobacco which, because of its appearance, type, packaging, or labeling is

suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

(C) For purposes of this definition of "cigarette", nine hundredths of an ounce (0.09 oz.) of roll-your-own tobacco shall constitute one (1) individual cigarette;

(5) "Master Settlement Agreement" means the settlement agreement and related documents entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers;

(6) "Qualified escrow fund" means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars ($1,000,000,000) when such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with § 26-57-261(a)(2)(B);

(7) "Released claims" means released claims as that term is defined in the Master Settlement Agreement;

(8) "Releasing parties" means releasing parties as that term is defined in the Master Settlement Agreement;

(9)(A) "Tobacco product manufacturer" means an entity that, after the date of enactment of this section and § 26-57-261, directly and not exclusively through any affiliate:

(i) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer, except where the importer is an original participating manufacturer, as that term is defined in the Master Settlement Agreement, who will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and who pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States;

(ii) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(iii) Becomes a successor of an entity described in subdivision (9)(A)(i) or (9)(A)(ii) of this section.

(B) "Tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer, unless such affiliate itself falls within any of subdivisions (9)(A)(i)-(9)(A)(iii) of this section; and

(10)(A) "Units sold" means the same as defined in § 26-57-1302.

(B) The Department of Finance and Administration shall promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

History. Acts 1999, No. 1165, § 1; 2011, No. 836, § 10.

Amendments. The 2011 amendment rewrote (10)(A).

26-57-261. Requirements.

CASE NOTES

Analysis

Constitutionality.
Federal Preemption.

Constitutionality.

The Allocable Share Amendment, subdivision (a)(2)(B)(ii) of this section, does not violate the dormant Commerce Clause, U.S. Const., Art. I, § 8, cl. 3; the Amendment does not make any distinction between in-state and out-of-state non-participating cigarette manufacturers, the Amendment is not clearly excessive in relation to the legitimate interest in public health, and the Amendment does not affect interstate commerce. Grand River Enters. Six Nations v. Beebe, 574 F.3d 929 (8th Cir. 2009).

The Allocable Share Amendment, subdivision (a)(2)(B)(ii) of this section, does not violate the Equal Protection Clause; although the Amendment does treat participating cigarette manufacturers under a master settlement agreement and non-participating manufacturers differently, the difference in treatment is rationally related to the state's legitimate interest in collecting future medical costs related to tobacco use. Grand River Enters. Six Nations v. Beebe, 574 F.3d 929 (8th Cir. 2009).

The Allocable Share Amendment, subdivision (a)(2)(B)(ii) of this section, does not violate the Due Process Clause; the state's interest in reducing smoking-related healthcare costs outweighs any private interest in escrow payments made by cigarette manufacturers. Also, before any escrow funds are permanently retained, the state must seek and be granted a court judgment or enter into a settlement. Grand River Enters. Six Nations v. Beebe, 574 F.3d 929 (8th Cir. 2009).

The Allocable Share Amendment, subdivision (a)(2)(B)(ii) of this section, did not violate the First Amendment rights of appellants, including a cigarette manufacturer that was a non-participant in a master settlement agreement. The loss of a competitive advantage that existed before the Amendment was enacted did not equate to an unlawful burden. Grand River Enters. Six Nations v. Beebe, 574 F.3d 929 (8th Cir. 2009).

Federal Preemption.

The Allocable Share Amendment, subdivision (a)(2)(B)(ii) of this section, was not preempted by the Sherman Act, 15 U.S.C.S. § 1; although the Amendment placed some pressure on certain cigarette manufacturers to raise prices to offset required escrow payments, that pressure did not force the manufacturers to raise prices in all cases, and the Amendment did not create a hybrid restraint of trade. Also, because the Amendment was enacted by the state legislature, Parker state action immunity applied. Grand River Enters. Six Nations v. Beebe, 574 F.3d 929 (8th Cir. 2009).

26-57-262. Sale of export cigarettes.

(a) Findings and Purpose.

(1) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The Surgeon General has determined that smoking causes lung cancer, heart disease, and other serious diseases and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) It is the policy of the state that consumers be adequately informed about the adverse health effects of cigarette smoking by including warning notices on each package of cigarettes.

(3) It is the intent of the General Assembly to align state law with federal laws, regulations, and policies relating to the manufacture, importation, and marketing of cigarettes, and in particular, the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331 et seq., and 26 U.S.C. § 5754.

(4) The General Assembly finds that consumers and retailers purchasing cigarettes are entitled to be fully informed about any adverse health effects of cigarette smoking by the inclusion of warning notices on each package of cigarettes and to be assured through appropriate enforcement measures that cigarettes they purchase were manufactured for consumption within the United States.

(b) DEFINITIONS.

As used in this section:

(1)(A) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(i) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) Tobacco, in any form, that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to or purchased by consumers as a cigarette; or

(iii) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to or purchased by consumers as a cigarette described in subdivision (b)(1)(A)(i) of this section.

(B) "Cigarette" includes "roll your own", which is any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

(C) For purposes of this definition of "cigarette", nine one-hundredths of an ounce (0.09 oz.) of "roll your own" tobacco shall constitute one (1) individual "cigarette"; and

(2) "Package" means a pack, carton, or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed or intended for distribution to consumers.

(c) TAX STAMPS.

(1) No tax stamp may be affixed to or made upon any package of cigarettes if:

(A) The package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331 et seq., for the placement of labels, warnings, or any other information upon a package of cigarettes that is manufactured, packaged, or imported for sale, distribution, or use within the United States;

(B) The package is labeled "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording indicating that the manufacturer did not intend that the product be sold in the United States;

(C) The cigarettes in the package do not comply with any other applicable requirements imposed pursuant to federal law and federal implementing regulations;

(D) The package in any way violates federal trademark or copyright laws;

(E) The package or a package containing individually stamped packages has been altered by adding or deleting the wording, labels, or warnings described in this subdivision (c)(1); or

(F) With respect to the cigarettes, any person is not in compliance with 15 U.S.C. § 1335a relating to submission of ingredient information to federal authorities, 19 U.S.C. §§ 1681-1681b relating to imports of certain cigarettes, 26 U.S.C. § 5754, relating to previously exported tobacco products, or any other federal law or implementing federal regulations.

(2) Any person who sells or holds for sale cigarette packages to which is affixed a tax stamp in violation of this section shall be subject to the penalties prescribed in subdivision (c)(5) of this section.

(3) The Arkansas Tobacco Control Board may revoke a wholesale or retail license of any person who sells or holds for sale cigarette packages to which is affixed a tax stamp in violation of this section.

(4) The Department of Finance and Administration or the Director of Arkansas Tobacco Control may seize and destroy or sell to the manufacturer only for export packages that do not comply with this section.

(5) A violation of this section is a deceptive act or practice and shall constitute a Class A misdemeanor.

(6) On or before the fifteenth business day of each month, each person licensed to affix the state tax stamp to cigarettes shall file with the Director of the Department of Finance and Administration for all cigarettes imported into the United States to which the person has affixed the tax stamp in the preceding month copies of the customs certificates with respect to the cigarettes required to be submitted by 19 U.S.C. § 1681a(c).

(7) Any person who sells, distributes, or manufactures cigarettes and sustains direct economic or commercial injury as a result of a violation of this section may bring an action in good faith for appropriate injunctive relief.

History. Acts 1999, No. 1285, §§ 1-3; 2001, No. 1545, §§ 1, 2; 2009, No. 785, § 29; 2011, No. 983, § 20.

Amendments. The 2009 amendment made a minor stylistic change in (c)(3), and substituted "Arkansas Tobacco Control" for "the board" in (c)(4).

The 2011 amendment inserted "the Director of" in (c)(4).

26-57-263. Cigarette inputs — Cigarette rolling machines.

(a)(1) It is unlawful for a person to sell cigarettes or cigarette inputs to, or purchase cigarettes from, a person in another state if the sale or purchase would violate the law of the other state.

(2) A cigarette input sold, possessed, transported, caused to be transported, or purchased in violation of this section is contraband and is subject to seizure and forfeiture to the state.

(b)(1) A person licensed, permitted, appointed, or commissioned under this subchapter and a person that directly or indirectly controls a person licensed, permitted, appointed, or commissioned under this subchapter shall not possess or otherwise utilize a cigarette rolling machine.

(2) A person that knowingly violates subdivision (b)(1) of this section shall be subject to the following civil penalties:

(A) The revocation or termination of any license, permit, appointment, or commission under this subchapter; and

(B)(i) A civil penalty of up to fifty thousand dollars ($50,000) in any action brought by the Director of the Department of Finance and Administration, Arkansas Tobacco Control, or the Attorney General.

(ii) Civil penalties collected under this subdivision (b)(2)(B) shall be general revenues of the state.

(3) A person that violates subdivision (b)(1) of this section shall also be guilty of a criminal offense that is:

(A) A Class C felony if the tax value of any cigarettes produced by means of the cigarette rolling machine is one hundred dollars ($100) or more; or

(B) A Class A misdemeanor if the tax value of any cigarettes produced by means of the cigarette rolling machine is less than one hundred dollars ($100).

(4)(A) This subsection (b) does not apply to cigarette rolling machines intended and designed for use by individual consumers who do not intend to offer the resulting product for resale.

(B) A cigarette rolling machine that has the capability to roll two hundred (200) cigarettes in less than fifteen (15) minutes is presumed to be for commercial use.

History. Acts 2011, No. 836, § 11.

26-57-264. Attorney General.

(a) Upon request of the Attorney General, any information provided to the Director of the Department of Finance and Administration or Arkansas Tobacco Control shall be provided to the Attorney General.

(b) The Attorney General may enforce §§ 26-57-245(b), 26-57-248, and 26-57-250 by filing a civil action in the Pulaski County Circuit Court.

History. Acts 2011, No. 836, § 11.

26-57-265. Reports by wholesalers to Arkansas Tobacco Control.

(a) Each wholesaler shall file with the Director of Arkansas Tobacco Control a monthly report of the wholesaler's deliveries to retailers and other wholesalers in this state and the wholesaler's deliveries from within this state to retailers and other wholesalers outside of this state.

(b) The report required under subsection (a) of this section shall contain the following information for the preceding calendar month's deliveries:

(1) The name of each retailer or wholesaler;

(2) The address of each retailer or wholesaler to which the wholesaler delivered cigarettes, cigars, or other tobacco products;

(3) The address of each retailer or wholesaler that obtained cigarettes, cigars, or other tobacco products from the wholesaler at the wholesaler's location;

(4) The Arkansas permit number of each retailer or wholesaler or the equivalent permit number if the retailer or wholesaler resides outside of the state; and

(5) The monthly net deliveries made to each retailer or wholesaler, including without limitation:

(A) The quantity, units, and brand styles of the cigarettes in stamped and unstamped packages that were delivered to each retailer or wholesaler; and

(B) The quantity, units, and brand styles of the cigars and other tobacco products delivered to the retailer or wholesaler.

(c) A wholesaler shall file the report required under subsection (a) of this section on or before the tenth day of each month.

(d)(1) Except as provided under this section, a wholesaler shall electronically file the report required under subsection (a) of this section with the director.

(2) The director may establish procedures for allowing an alternative method of filing for a wholesaler that demonstrates to the director that it is not reasonably feasible to comply with the primary electronic reporting method adopted.

(3) If the director determines that another method of filing the report is more efficient than electronic filing, the director may promulgate rules requiring the use of another method by wholesalers.

(e)(1)(A) Except for information that has been submitted as evidence in a concluded investigation resulting in an administrative violation or criminal charge, information contained in a report required to be filed under this section is confidential and not subject to release.

(B) Before information contained in a report required to be filed under this section is disclosed or transmitted in a manner in which the information may become available to the public or a competitor of the reporting wholesaler, including in an administrative violation or criminal charge, the director shall provide sufficient advance notice to the reporting wholesaler to allow the reporting wholesaler to seek an order protecting any confidentially sensitive information.

(2)(A) Information contained in a report required to be filed under this section may be transmitted or otherwise provided to:

(i) The appropriate taxing authority in a state to which deliveries shown on the report were made;

(ii) A requesting law enforcement agency; and

(iii) The Attorney General.

(B) The person or entity receiving information under subdivision (e)(2)(A) of this section shall agree to maintain the confidentiality of the information before the information may be transmitted to the person or entity.

(C) Information provided to a taxing authority or law enforcement agency under subdivision (e)(2)(A) of this section shall remain confidential and not subject to release.

(f) The director may promulgate rules to implement this section.

(g) The report required to be filed under this section shall fulfill the reporting required to the state under the Prevent All Cigarette Trafficking Act of 2009, Pub. L. No. 111-154.

(h)(1) The director shall provide the information reported under this section to the Attorney General.

(2) The director's action under subdivision (h)(1) of this section satisfies the wholesaler's reporting obligations under § 26-57-1406.

History. Acts 2013, No. 1272, § 1.

Effective Dates. Acts 2013, No. 1272, § 3: Sept. 1, 2013. Effective date clause provided: "This act shall be effective on and after September 1, 2013."

Subchapter 4 — Coin-Operated Amusements

26-57-401. Purposes.

The purposes of this subchapter are to permit, license, and regulate the operation of coin-operated amusement devices and to fix a penalty for a violation of this subchapter.

History. Acts 1939, No. 201, § 1; A.S.A. 1947, § 84-2611n; Acts 2009, No. 655, § 84.

Amendments. The 2009 amendment rewrote the section.

26-57-407. Disposition of revenue collected.

(a) All revenue collected under this section and §§ 26-57-401 — 26-57-406 shall be deposited into the State Treasury.

(b) The first thirty thousand dollars ($30,000) annually collected shall be placed to the credit of the Public School Fund, and all moneys over thirty thousand dollars ($30,000) annually collected shall be placed to the credit of the State Board of Health for rural health work.

History. Acts 1939, No. 201, § 8; 1941, No. 319, § 8; A.S.A. 1947, § 84-2616; Acts 2009, No. 655, § 85.

Amendments. The 2009 amendment substituted "§§ 26-57-401 – 26-57-406" for §§ 26-57-306 [repealed] and 26-57-401 – 26-57-407" in (a); and made minor stylistic and punctuation changes.

26-57-408. Owning, operating, or leasing a privilege — Privilege fee imposed.

(a) The business of owning, operating, or leasing coin-operated amusement devices, including, but not limited to, the coin-operated amusement devices defined in § 26-57-402, is declared to be a privilege.

(b) It is further declared that the owners, operators, and lessors of coin-operated amusement devices shall pay a fee for the privilege of owning, operating, or leasing coin-operated amusement devices in addition to the privilege tax required by § 26-57-404 to be paid on amusement devices.

History. Acts 1977, No. 553, § 1; A.S.A. 1947, § 84-2633; Acts 2009, No. 655, § 86.

Amendments. The 2009 amendment rerwrote (b).

26-57-414. Owning, operating, or leasing without license a public nuisance — Seizure and sale of devices — Redemption — Subsequent license fee credit.

(a) Any person who engages in the business of owning, operating, or leasing coin-operated amusement devices without first obtaining the license prescribed in § 26-57-412 is declared to be maintaining a public nuisance.

(b)(1) A coin-operated amusement device owned, operated, or leased without first obtaining the license prescribed in § 26-57-412 shall be seized by an authorized agent of the Revenue Division of the Department of Finance and Administration and sold by the Director of the Department of Finance and Administration at public auction on an order of the Pulaski County Circuit Court.

(2) However, a coin-operated amusement device seized under subdivision (b)(1) of this section may be redeemed before sale by the owner of the coin-operated amusement device upon the payment of:

(A) All sales or use taxes due on the coin-operated amusement device;

(B) The sales tax on the receipt of the wrongfully operated coin-operated amusement device;

(C) All costs and expenses incurred in connection with the seizure and obtaining the order of the court; and

(D) A penalty of one thousand dollars ($1,000).

(c) If the offender applies for a license as provided in this subchapter within thirty (30) days subsequent to the payment of the penalty, five hundred dollars ($500) of such penalty shall be allowed as the first annual license fee in the event the license is granted.

History. Acts 1977, No. 553, § 8; A.S.A. 1947, § 84-2640; Acts 2009, No. 655, § 87.

Amendments. The 2009 amendment subdivided (b)(2), and made minor stylistic changes throughout (b).

26-57-416. Lessor's records — Sales taxes.

(a) In all cases in which a licensee under this subchapter leases amusement devices to others, it shall be the duty of the licensee to keep records of the amount of rent received by the licensee and the amount retained by the lessee and to furnish carbon copies of such records to the lessee.

(b)(1) A licensee shall ascertain the amount of sales tax due on the receipts of the amusement device and withhold the amount of the sales tax due from the receipts and remit the sales tax due to the Revenue Division of the Department of Finance and Administration.

(2) The amount of sales tax shall not be taken into consideration in determining the rent due the licensee.

(c) All records required to be kept by the licensee under the provision of this subchapter shall be made available to the Director of the Department of Finance and Administration within a reasonable time after request or the license of the offending licensee may be revoked as provided in this subchapter.

History. Acts 1977, No. 553, § 7; A.S.A. 1947, § 84-2639; Acts 2009, No. 655, § 88.

Amendments. The 2009 amendment substituted "amusement device" for "machine" in (b)(1), and made minor stylistic changes.

26-57-417. Decal or card with licensee's number.

(a) In addition to the tax stamp which must be displayed on each amusement device as required under other statutes, each licensee under this subchapter shall procure and exhibit on each amusement device owned or operated under such license a decal or card showing the number of the license under which the amusement device is operated.

(b)(1) Any coin-operated amusement device exhibited without the decal or card showing the number of the license as required in subsection (a) of this section is declared to be the maintenance of a public nuisance, and such an amusement device may be seized as provided in § 26-57-414.

(2) However, if the owner of the coin-operated amusement device is a licensed operator under this subchapter, the owner may redeem the

coin-operated amusement device upon the payment of a penalty of ten dollars ($10.00).

History. Acts 1977, No. 553, § 10; A.S.A. 1947, § 84-2642; Acts 2009, No. 655, § 89.

Amendments. The 2009 amendment substituted "coin-operated amusement device" for "machine" twice in (b)(2), and made minor stylistic changes.

26-57-420. Notice to purchaser of tax consequences of sale required.

(a)(1) Before a sale of any coin-operated amusement device is concluded, the licensee or his or her salesperson shall notify the purchaser that the operation of the coin-operated amusement device is subject to taxation under this subchapter.

(2) All receipts, invoices, bills of sale, or other documents must contain thereon a notice citing the applicable sections of the law and warning the purchaser of the applicable tax.

(b)(1) Any sale which is made without notifying the purchaser of the existence of the aforementioned applicable sections of the law or when the documents executed in connection with the sale do not cite the appropriate statutes and warn of applicable tax shall be void, and the purchaser may at his or her option cancel the sale, whereupon the licensee shall immediately rebate the purchase price or the deposit made by the purchaser.

(2) The failure of the licensee to rebate such funds after demand by the purchaser shall entitle the purchaser to file suit against the bond of the licensee which is required by § 26-57-419(d), and the license of the licensee shall be revoked if the purchaser obtains a judgment against the bondsman.

History. Acts 1977, No. 553, §§ 14, 15; A.S.A. 1947, §§ 84-2646, 84-2647; Acts 2009, No. 655, § 90.

Amendments. The 2009 amendment, in (a)(1), inserted "coin-operated" and substituted "under this chapter" for "as set forth in §§ 26-57-301 et seq. [repealed] and 26-57-402 –26-57-407."

Subchapter 6 — Insurance Premium Taxes

26-57-604. Remittance of tax.

(a)(1)(A) Coincident with the filing of the tax report, each authorized life or accident and health insurer, including licensed health maintenance organizations, may apply for a credit for the noncommissioned salaries and wages of the insurer's Arkansas employees which are paid in connection with its insurance operations.

(B) The credit may be applied as an offset against the premium tax imposed in § 26-57-603(d) on life and accident and health insurance.

(2)(A) In no event shall the offset reduce the accident and health premium tax due by more than eighty percent (80%).

(B) In no event shall the offset reduce the life premium tax due by more than seventy percent (70%).

(C) The taxes shall be reported and paid on a quarterly estimated basis as prescribed by the Insurance Commissioner and shall be reconciled annually at the time of filing the annual report required in § 26-57-603(a)-(c).

(3) Furthermore, an employee must be employed for six (6) months in the facilities for the salary or wages to be eligible to qualify for the life or disability premium tax credit.

(4)(A)(i) Except as provided in subdivision (a)(4)(B) of this section, on or before March 1 of each year, any such authorized life or accident and health insurer, including health maintenance organizations, desiring to qualify under this provision shall furnish the appropriate data and request on forms prescribed by the commissioner.

(ii) For purposes of calculating the taxes under §§ 23-63-102 — 23-63-104, an insurer qualifying for a credit under this section shall compute the tax due under §§ 23-63-102 — 23-63-104, if any, by using an Arkansas premium tax rate of two and one-half percent (2½%).

(B)(i) Subdivision (a)(4)(A) of this section shall only apply for tax years beginning prior to January 1, 2000.

(ii) On or before March 1 of 2000 and each year thereafter, any such authorized life or disability insurer, including health maintenance organizations, desiring to qualify under this provision shall furnish the appropriate data and request on forms prescribed by the commissioner.

(iii) However, for purposes of calculating the taxes under §§ 23-63-102 — 23-63-104, an insurer qualifying for a credit under this section shall compute the tax due under §§ 23-63-102 — 23-63-104, if any, by using an Arkansas premium tax rate of two and one-half percent (2½%) without regard to the credit specified in this section.

(b)(1) Each insurer other than those in § 26-57-603(d) and subsection (a) of this section shall pay to the Treasurer of State through the commissioner, as a tax imposed for the privilege of transacting business in this state, a tax at the rate of two and one-half percent (2½%) upon the net premiums and net considerations on all kinds of insurance, except as provided in § 26-57-605.

(2) The taxes shall be paid on a quarterly estimate basis as prescribed by the commissioner and shall be reconciled annually at the time of filing the annual report required in § 26-57-603(a)-(c).

(c)(1) In addition to any premium tax credit not related to the same eligible property for which an insurer qualifies under subsection (a) of this section, there is allowed a premium tax credit for the amount of the Arkansas historic rehabilitation income tax credit allowed by the

certification of completion issued by the Department of Arkansas Heritage under the Arkansas Historic Rehabilitation Income Tax Credit Act, § 26-51-2201 et seq.

(2) The premium tax credit under this subsection may be used to offset the premium tax imposed by §§ 26-57-603 — 26-57-605.

(3) The amount of the premium tax credit under this section that may be claimed by the taxpayer in a tax year shall not exceed the amount of premium tax due by the taxpayer.

(4) Any unused premium tax credit may be carried forward for a maximum of five (5) consecutive taxable years for credit against the premium tax.

(5) The Insurance Commissioner shall promulgate rules to implement this section.

History. Acts 1959, No. 148, § 69; 1975, No. 450, § 1; 1979, No. 908, § 1; 1981, No. 595, § 1; A.S.A. 1947, § 66-2302; Acts 1987, No. 1033, § 1; 1989, No. 772, § 20; 1999, No. 881, § 23; 2001, No. 1604, § 124; 2009, No. 498, § 3.

Amendments. The 2009 amendment added (c).

Effective Dates. Acts 2009, No. 498, § 4, provided: "This act is effective for tax years beginning on and after January 1, 2009, and ending on or before December 31, 2015."

26-57-610. Disposition of taxes.

The Insurance Commissioner shall deposit all taxes collected under the provisions of §§ 26-57-604 and 26-57-605 into the State Treasury, and on the last business day of each month the Treasurer of State shall classify such taxes as to the following types of revenues and credit the net amounts respectively of taxes collected under the provisions of §§ 26-57-604 and 26-57-605 as indicated in this section:

(1) The taxes based on premiums collected as special revenues shall be distributed to the respective cities, incorporated towns, and fire protection districts in this state for credit to the respective firemen's relief and pension funds;

(2) Except as provided in subdivision (3) of this section, all other taxes collected under §§ 26-57-604 and 26-57-605 shall be classified as general revenues, and the net amount of taxes collected under §§ 26-57-604 and 26-57-605 shall be credited to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.; and

(3) Amounts collected under §§ 26-57-604 and 26-57-605 above the forecasted level for insurance premium taxes set by the Chief Fiscal Officer of the State under § 10-3-1404(a)(1)(A) shall be credited by the Treasurer of State to the Arkansas Medicaid Program Trust Fund and shall be disbursed and used for the sole purpose of increasing per diem reimbursement for general hospital inpatient services provided to Medicaid beneficiaries and to increase private duty nursing rates for

registered nurses and licensed practical nurses in home health agencies in the following amounts:

	FY 2006	FY 2007
(A) Raise the capitated daily rate for hospitals to a maximum of $850	$6,500,000	$6,500,000
(B) Medicaid private duty nursing rate increase for registered nurses and licensed practical nurses	$200,000	$200,000.

History. Acts 1959, No. 148, § 70; 1959, No. 304, § 2; 1968 (1st Ex. Sess.), No. 24, § 3; A.S.A. 1947, § 66-2303; Acts 2005, No. 2222, § 1; 2013, No. 1224, § 4.

Amendments. The 2013 amendment substituted "State under § 10-3-1404(a)(1)(A)" for "State under § 10-3-1404(A)" in (b).

26-57-611. Disposition of nonallocated funds.

The Insurance Commissioner shall deposit all premium taxes collected under this subchapter that are not allocated and appropriated for the various funds under the Workers' Compensation Law, § 11-9-101 et seq., for the Arkansas Fire and Police Pension Review Board and firemen's relief and pension funds under § 24-11-809 and for the Arkansas Fire and Police Pension Review Board and police officer's pension and relief funds under § 24-11-301 into the State Treasury as general revenues.

History. Acts 1987, No. 1033, § 1; 2009, No. 655, § 91.

Amendments. The 2009 amendment deleted "24-11-810 [repealed], and 26-57-609 [repealed]" following "§ 24-11-809" and made related and minor stylistic changes.

26-57-615. Domiciled insurers' premium tax credit for certain fees payable to other jurisdictions.

(a) If, by the laws of any state other than Arkansas or by the retaliatory laws of any state other than Arkansas, any insurer domiciled in Arkansas on or after April 6, 1993, shall be required to pay any fee based on the insurer's premium volume in such other state of licensure, and the fee imposed by such other state is due and payable either because the administrative and financial regulatory fee, "financial fee", based on premium volume assessed by the State Insurance Department Trust Fund Act, § 23-61-701 et seq., as it is popularly known, on insurers licensed in Arkansas and organized or domiciled in such other state is greater than the comparable fee assessed in such other state, or such other state has no comparable fee but requires payment on a retaliatory basis, then to the extent such fee amounts are legally due and are paid in such other state, any insurer domiciled in Arkansas on and after April 6, 1993, may claim a dollar-for-dollar credit

for such fees paid against its annual premium taxes due the State of Arkansas under this subchapter, but such credit shall only be calculated on the amount which would not have been required to be paid in such other state of licensure in the absence of the existence of the financial fee assessed under the State Insurance Department Trust Fund Act, § 23-61-701 et seq., and in no event shall the credit permitted by this section exceed ninety percent (90%) of the insurer's annual premium tax due the State of Arkansas.

(b)(1) Credits permitted in subsection (a) of this section shall be reported annually on March 1.

(2) The Insurance Commissioner shall prescribe the forms for reporting such credits and further shall examine insurer claims for credit made under this section.

(3) If the commissioner shall determine that any amount for which a credit shall have been claimed was not legally due to another state, or that an error exists in the amount of the credit shown on such return, or the amount claimed is a refund or refunded, the commissioner shall take appropriate action under any and all civil and administrative Arkansas laws at the commissioner's disposal, including suspension or revocation of the Arkansas certificate of authority of the noncomplying insurer, for collection and recovery of the premium tax due resulting from the disallowance of a claim for credit made under this section or to disallow any such claim for refund.

History. Acts 1993, No. 901, § 44; 2009, No. 655, § 92.

Amendments. The 2009 amendment rewrote (b)(1).

Subchapter 8 — Additional Tax on Tobacco Products

Effective Dates. Acts 2009, No. 180, § 6: Mar. 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that existing funding levels are inadequate to meet the medical care needs of the state. That without immediately obtaining adequate funding levels for medical care the citizens of this state will suffer irreparable harm to their health and well-being. This bill shall immediately provide additional funding that is needed to make the funding level adequate and humane. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public

peace, health, and safety shall become effective on March 1, 2009."

Acts 2009, No. 940, § 5: Apr. 6, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the tax on cigarettes has been drastically increased; that the increase went into effect on March 1, 2009; that there are cities that adjoin border cities that are separated by a river from a city in an adjoining state; that these border cities are able to sell cigarettes at the rate of the adjoining state; and that this creates a drastic loss in cigarette sales for the cities that adjoin these border cities. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 510, § 5: Oct. 1, 2013. Effective date clause provided: "Sections 1 through 4 of this act are effective on the first day of the second calendar month following the effective date of this act."

Acts 2013, No. 631, § 11: Emergency clause failed. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that it is the intent of the General Assembly to clarify that each excise tax on tobacco products levied under current law is applicable to all tobacco products offered for sale within the State of Arkansas; that revenues from excise taxes under current law on all tobacco products offered for sale within the state are vital to protect the health and welfare of the citizens of this state; and that this act is immediately necessary to ensure and maintain the efficient administration and collection of revenues levied under current law on tobacco products sold within the state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-57-803. Additional tax — Applicability. [Effective until October 1, 2013.]

(a)(1) In addition to the excise or privilege taxes levied under §§ 26-57-208 and 26-57-802, there is levied a tax of four dollars and seventy-five cents ($4.75) per one thousand (1,000) cigarettes sold in the state.

(2) Whenever there are two (2) adjoining cities, each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in such adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside of Arkansas plus the fifty cents (50¢) per one thousand (1,000) cigarettes presently imposed by § 26-57-802. The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(3) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line, in any Arkansas city which adjoins a state line, or in any city that is separated only by a navigable river from a city that adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state plus the twenty-five cents (25¢) per one thousand

(1,000) cigarettes presently imposed by § 26-57-802. The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(4)(A) The tax on cigarettes shall be at the rate imposed by law on cigarettes sold in the adjoining state plus the additional tax levied by § 26-57-802 when the cigarettes are sold in an Arkansas city or incorporated town whose corporate limits adjoin the corporate limits of an Arkansas border city.

(B) As used in subdivision (a)(4)(A) of this section, "Arkansas border city" means a city that is entitled to the border zone cigarette tax rate and is separated by a navigable river from a city in the other state that is located in a metropolitan statistical area designated by the United States Census Bureau with a population of at least one million (1,000,000).

(C) The tax shall not exceed the tax upon cigarettes otherwise imposed under Arkansas law.

(b) In addition to the tax imposed by § 26-57-208(2), there is levied an additional excise or privilege tax on the sale of tobacco products other than cigarettes by wholesalers to retailers or by licensed retailers to the Director of the Department of Finance and Administration at seven percent (7%) of the manufacturer's selling price. The tax shall be computed before discounts.

(c)(1)(A) The taxes levied by this section shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(B) However, retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(2)(A) Any taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(i) Five percent (5%) of the total tobacco tax due for the first offense;

(ii) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(iii) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(B) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(3) The provisions of this subsection shall not affect the provisions of § 26-57-228.

(d) As provided in § 26-57-244, the director may make a direct assessment of excise tax against any person in possession of an untaxed tobacco product or unstamped cigarettes.

History. Acts 1992 (2nd Ex. Sess.), No. 2, §§ 1, 2, 5; 1993, No. 1177, § 1; 1997, No. 1339, § 1; 1999, No. 1246, §§ 4, 5; 2007, No. 817, § 4; 2007, No. 827, § 230; 2009, No. 940, § 2.

Publisher's Notes. For text of section effective October 1, 2013, see the following version.

Amendments. The 2009 amendment inserted (a)(4).

26-57-803. Additional tax — Applicability. [Effective October 1, 2013.]

(a)(1) In addition to the excise or privilege taxes levied under §§ 26-57-208 and 26-57-802, there is levied a tax of four dollars and seventy-five cents ($4.75) per one thousand (1,000) cigarettes sold in the state.

(2) Whenever there are two (2) adjoining cities, each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in such adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside of Arkansas plus the fifty cents (50¢) per one thousand (1,000) cigarettes presently imposed by § 26-57-802. The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(3) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line, in any Arkansas city which adjoins a state line, or in any city that is separated only by a navigable river from a city that adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state plus the twenty-five cents (25¢) per one thousand (1,000) cigarettes presently imposed by § 26-57-802. The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(4)(A) The tax on cigarettes shall be at the rate imposed by law on cigarettes sold in the adjoining state plus the additional tax levied by § 26-57-802 when the cigarettes are sold in an Arkansas city or incorporated town whose corporate limits adjoin the corporate limits of an Arkansas border city.

(B) As used in subdivision (a)(4)(A) of this section, "Arkansas border city" means a city that is entitled to the border zone cigarette tax rate and is separated by a navigable river from a city in the other state that is located in a metropolitan statistical area designated by the United States Census Bureau with a population of at least one million (1,000,000).

(C) The tax shall not exceed the tax upon cigarettes otherwise imposed under Arkansas law.

(b)(1) In addition to the tax imposed by § 26-57-208(2), there is levied an additional excise or privilege tax on the sale of tobacco products other than cigarettes that are offered for sale in the state at seven percent (7%) of the invoice price to a wholesaler or retailer, before discounts.

(2) However, the excise or privilege tax levied under subdivision (b)(1) of this section is subject to the limitation stated in § 26-57-208(2)(B).

(c)(1)(A) The taxes levied by this section shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(B) However, retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(2)(A) Any taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(i) Five percent (5%) of the total tobacco tax due for the first offense;

(ii) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(iii) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(B) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(3) The provisions of this subsection shall not affect the provisions of § 26-57-228.

(d) As provided in § 26-57-244, the director may make a direct assessment of excise tax against any person in possession of an untaxed tobacco product or unstamped cigarettes.

History. Acts 1992 (2nd Ex. Sess.), No. 2, §§ 1, 2, 5; 1993, No. 1177, § 1; 1997, No. 1339, § 1; 1999, No. 1246, §§ 4, 5; 2007, No. 817, § 4; 2007, No. 827, § 230; 2009, No. 940, § 2; 2013, No. 510, § 2; 2013, No. 631, § 7.

Publisher's Notes. For text of section effective until October 1, 2013, see the preceding version.

Amendments. The 2009 amendment inserted (a)(4).

The 2013 amendments by Nos. 510 and 631 rewrote (b)(2).

Effective Dates. Acts 2013, No. 510, § 5: Oct. 1, 2013. Effective date clause provided: "Sections 1 through 4 of this act are effective on the first day of the second calendar month following the effective date of this act."

26-57-804. Additional tax on cigarettes.

(a) In addition to the excise or privilege taxes levied under §§ 26-57-208, 26-57-802, 26-57-803, and 26-57-1101, there is levied an additional tax of twelve dollars and fifty cents ($12.50) per one thousand (1,000) cigarettes sold in the state.

(b)(1)(A) Whenever there are two (2) adjoining cities each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in the adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside Arkansas.

(B) The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.

(2)(A) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line in any Arkansas city that adjoins a state line or in any city that is separated only by a navigable river from a city

that adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state.

(B) The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.

(3)(A) The tax on cigarettes shall be at the rate imposed by law on cigarettes sold in the adjoining state if the cigarettes are sold in an Arkansas city or incorporated town whose corporate limits adjoin the corporate limits of an Arkansas border city.

(B) As used in subdivision (b)(3)(A) of this section, "Arkansas border city" means a city that is entitled to the border zone cigarette tax rate and is separated by a navigable river from a city in the other state that is located in a metropolitan statistical area designated by the United States Census Bureau with a population of at least one million (1,000,000).

(C) The tax shall not exceed the tax upon cigarettes otherwise imposed under Arkansas law.

(4)(A) A wholesaler or retailer shall not sell cigarettes to a retailer located outside a border zone described in subdivisions (b)(1)-(3) of this section unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, and 26-57-1101 without regard to any reduced border zone rate has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.

(B) A retailer located outside a border zone described in subdivisions (b)(1)-(3) of this section shall not possess or offer for sale cigarettes unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, and 26-57-1101 without regard to any reduced border zone rate has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.

(C) A violation of this subdivision (b)(4) shall be grounds for the suspension or revocation of a permit or license issued by the Director of Arkansas Tobacco Control.

(c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-210 [repealed] shall apply to this section.

(d) The additional tax levied under this section shall be imposed, reported, remitted, and administered in the same manner and at the same time as other taxes levied on cigarettes in the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

(e) The Director of the Department of Finance and Administration shall pay the commission authorized by § 26-57-236 with respect to the tax levied by this section.

(f) The revenue derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections.

(g) As provided in § 26-57-244, the director may make a direct assessment of excise tax against any person in possession of unstamped cigarettes.

History. Acts 2003 (1st Ex. Sess.), No. 38, § 1; 2007, No. 817, § 5; 2007, No. 827, § 231; 2009, No. 180, § 3; 2009, No. 655, § 93; 2009, No. 785, § 30; 2009, No. 940, § 3; 2011, No. 983, § 21.

A.C.R.C. Notes. Pursuant to Acts 2009, No. 655, § 128, the amendments by Acts 2009, No. 180, §§ 1 and 3, supersede the amendment to this section by Acts 2009, No. 655, § 93.

Amendments. The 2009 amendment by No. 180 substituted "shall pay" for "shall not pay" in (e).

The 2009 amendment by No. 785 substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (b)(3)(C).

The 2009 amendment by No. 940 inserted (b)(3), redesignated the subsequent subdivision accordingly, substituted "(b)(1)-(3)" for "(b)(1) and (2)" in (b)(4)(A) and (b)(4)(B), and substituted "(b)(4)" for "(b)(3)" in (b)(4)(C).

The 2011 amendment substituted "§ 26-57-236" for "§ 26-57-236(g)" in (e).

26-57-805. Additional tax on tobacco products other than cigarettes. [Effective October 1, 2013.]

(a)(1) In addition to the excise or privilege taxes levied under §§ 26-57-208, 26-57-803, and 26-57-1102, there is levied an additional tax on tobacco products other than cigarettes that are offered for sale in the state at seven percent (7%) of the invoice price to a wholesaler or retailer, before discounts.

(2) However, the excise or privilege tax levied under subdivision (a)(1) of this section is subject to the limitation stated in § 26-57-208(2)(B).

(b)(1) The tax levied by this section shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(2) However, retailers shall be liable for reporting and paying this tax when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-210 [repealed] shall apply to this section.

(d) The revenue derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections for that month.

(e) As provided in § 26-57-244, the Director of the Department of Finance and Administration may make a direct assessment of excise tax against any person in possession of an untaxed tobacco product.

History. Acts 2003 (1st Ex. Sess.), No. 38, § 2; 2007, No. 817, § 6; 2013, No. 510, § 3; 2013, No. 631, § 8.

Publisher's Notes. For version of section effective until October 1, 2013, see the bound volume.

Amendments. The 2013 amendment by Nos. 510 and 631 rewrote (a).

Effective Dates. Acts 2013, No. 510, § 5: Oct. 1, 2013. Effective date clause provided: "Sections 1 through 4 of this act are effective on the first day of the second calendar month following the effective date of this act."

26-57-806. Additional tax on cigarettes.

(a) In addition to the excise or privilege taxes levied under §§ 26-57-208, 26-57-802, 26-57-803, 26-57-804, and 26-57-1101, there is levied an additional tax of twenty-eight dollars ($28.00) per one thousand (1,000) cigarettes sold in the state.

(b)(1)(A) Whenever there are two (2) adjoining cities each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in the adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside Arkansas.

(B) The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.

(2)(A) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line in any Arkansas city that adjoins a state line or in any city that is separated only by a navigable river from a city that adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state.

(B) The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.

(3)(A) The tax on cigarettes sold in any Arkansas city or incorporated town whose corporate limits adjoin the corporate limits of an Arkansas border city shall be at the rate imposed by law on cigarettes sold in the adjoining state.

(B) As used in subdivision (b)(3)(A) of this section, "Arkansas border city" means a city which is entitled to the border zone cigarette tax rate and is separated by a navigable river from the city in the other state that is located in a metropolitan statistical area designated by the United States Census Bureau with a population of at least one million (1,000,000).

(C) The tax shall not exceed the tax upon cigarettes otherwise imposed under Arkansas law.

(4)(A) A wholesaler or retailer shall not sell cigarettes to a retailer located outside a border zone described in subdivisions (b)(1)–(3) of this section unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, 26-57-804, and 26-57-1101 without regard to any reduced border zone rate has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.

(B) A retailer located outside a border zone described in subdivisions (b)(1)–(3) of this section shall not possess or offer for sale cigarettes unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, 26-57-804, and 26-57-1101 without regard to any reduced border zone rate has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.

(C) A violation of this subdivision (b)(4) shall be grounds for the suspension or revocation of a permit or license issued by the Director of Arkansas Tobacco Control.

(c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-210 [repealed] shall apply to this section.

(d) The additional tax levied under this section shall be imposed, reported, remitted, and administered in the same manner and at the same time as other taxes levied on cigarettes in the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

(e) The revenue derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections for that month in accordance with the Revenue Stabilization Law, § 19-5-201 et seq.

(f) As provided in § 26-57-244, the Director of the Department of Finance and Administration may make a direct assessment of excise tax against any person in possession of unstamped cigarettes.

History. Acts 2009, No. 180, § 4; 2009, No. 940, § 4.

Amendments. The 2009 amendment by No. 940 inserted (b)(3), redesignated the subsequent subdivision accordingly, substituted "(b)(1)-(3)" for "(b)(1) and (2)" in (b)(4)(A) and (b)(4)(B), and substituted "(b)(4)" for "(b)(3)" in (b)(4)(C).

26-57-807. Additional tax on tobacco products other than cigarettes. [Effective until October 1, 2013.]

(a)(1) In addition to the excise or privilege taxes levied under §§ 26-57-208, 26-57-803, 26-57-805 and 26-57-1102, there is levied an additional tax on tobacco products other than cigarettes on the first sale to wholesalers or retailers within the state at thirty-six percent (36%) of the manufacturer's selling price.

(2) The tax shall be computed on the manufacturer's actual invoice price before discounts and deals.

(b)(1) The tax levied by this section shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(2) However, retailers shall be liable for reporting and paying this tax when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed under § 26-57-214.

(c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-210 [repealed] shall apply to this section.

(d) The additional tax levied under this section shall be imposed, reported, remitted, and administered in the same manner and at the same time as other taxes levied on cigarettes in the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

(e) The revenue derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections for that month in accordance with the Revenue Stabilization Law, § 19-5-201 et seq.

(f) As provided in § 26-57-244, the Director of the Department of Finance and Administration may make a direct assessment of excise tax against any person in possession of an untaxed tobacco product.

History. Acts 2009, No. 180, § 5.

Publisher's Notes. For text of section effective October 1, 2013, see the following version.

26-57-807. Additional tax on tobacco products other than cigarettes. [Effective October 1, 2013.]

(a)(1) In addition to the excise or privilege taxes levied under §§ 26-57-208, 26-57-803, 26-57-805 and 26-57-1102, there is levied an additional tax on tobacco products that are offered for sale in the state at thirty-six percent (36%) of the invoice price to a wholesaler or retailer, before discounts.

(2) However, the excise or privilege tax levied under subdivision (a)(1) of this section is subject to the limitation stated in § 26-57-208(2)(B).

(b)(1) The tax levied by this section shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(2) However, retailers shall be liable for reporting and paying this tax when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed under § 26-57-214.

(c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-210 [repealed] shall apply to this section.

(d) The additional tax levied under this section shall be imposed, reported, remitted, and administered in the same manner and at the same time as other taxes levied on cigarettes in the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

(e) The revenue derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections for that month in accordance with the Revenue Stabilization Law, § 19-5-201 et seq.

(f) As provided in § 26-57-244, the Director of the Department of Finance and Administration may make a direct assessment of excise tax against any person in possession of an untaxed tobacco product.

History. Acts 2009, No. 180, § 5; 2013, No. 510, § 4; 2013, No. 631, § 9.

Publisher's Notes. For text of section effective until October 1, 2013, see the preceding version.

Amendments. The 2013 amendments by Nos. 510 and 631 rewrote (2).

Effective Dates. Acts 2013, No. 510, § 5: Oct. 1, 2013. Effective date clause provided: "Sections 1 through 4 of this act are effective on the first day of the second calendar month following the effective date of this act."

Subchapter 9 — Arkansas Soft Drink Tax Act

SECTION.

26-57-904. Tax rate.

(a) There is hereby levied and there shall be collected a tax upon every distributor, manufacturer, or wholesale dealer, to be calculated as follows:

(1) Two dollars ($2.00) per gallon for each gallon of soft drink syrup or simple syrup sold or offered for sale in the State of Arkansas;

(2) Twenty-one cents (21¢) per gallon for each gallon of bottled soft drinks sold or offered for sale in the State of Arkansas; and

(3)(A) When a package or container of powder or other base product, other than a syrup or simple syrup, is sold or offered for sale in Arkansas, and the powder is for the purpose of producing a liquid soft drink, then the tax on the sale of each package or container shall be equal to twenty-one cents (21¢) for each gallon of soft drink which may be produced from each package or container by following the manufacturer's directions.

(B) This tax applies when the sale of the powder or other base is sold to a retailer for sale to the ultimate consumer after the liquid soft drink is produced by the retailer.

(b)(1) Any retailer or retail dealer who purchases bottled soft drinks, soft drink syrup, simple syrup, powder, or base product from an unlicensed distributor, manufacturer, or wholesale dealer shall be liable for the tax levied in subsection (a) of this section on those purchases.

(2) A retailer shall not be subject to this tax if the retailer purchases syrups, simple syrups, powders or base products, or soft drinks from a supplier licensed under § 26-57-909.

History. Acts 1992 (2nd Ex. Sess.), No. 7, §§ 4, 5; 2009, No. 655, § 94.

Amendments. The 2009 amendment inserted "and" at the end of (a)(2).

Subchapter 10 — Vending Devices Sales Tax

SECTION.

Effective Dates. Acts 2011, No. 828, § 11: Oct. 1, 2011.

26-57-1005. Disposition of revenues.

(a) The revenues derived from § 26-57-1002(d)(1) shall be general revenues and shall be deposited into the State Treasury in the same manner as the Arkansas gross receipts tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(b) All revenues derived from § 26-57-1002(d)(2) shall be deposited by the Treasurer of State into the Identification Pending Trust Fund for

Local Sales and Use Taxes under §§ 26-74-221, 26-75-223, and 26-82-113, and all revenues deposited into that fund shall be distributed to the cities and counties of this state under §§ 26-74-221(a)(2)(C)(ii), 26-75-223(a)(2)(C)(ii), and 26-82-113(a)(2)(A)(ii).

History. Acts 1995, No. 934, § 4; 2011, No. 828, § 9.

Amendments. The 2011 amendment, in (b), inserted "and 26-82-113" and added "and 26-82-113(a)(2)(A)(ii)" at the end.

Effective Dates. Acts 2011, No. 828, § 11: Oct. 1, 2011.

Subchapter 11 — Tax on Tobacco Products to Fund Breast Cancer Control and Research

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Effective Dates. Acts 2013, No. 631, § 11: Emergency clause failed. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that it is the intent of the General Assembly to clarify that each excise tax on tobacco products levied under current law is applicable to all tobacco products offered for sale within the State of Arkansas; that revenues from excise taxes under current law on all tobacco products offered for sale within the state are vital to protect the health and welfare of the citizens of this state; and that this act is immediately necessary to ensure and maintain the efficient administration and collection of revenues levied under current law on tobacco products sold within the state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-57-1102. Additional tax — Tobacco products other than cigarettes.

(a) In addition to the tax imposed by § 26-57-208(2), there is levied an additional excise or privilege tax on tobacco products other than cigarettes that are offered for sale in the state at two percent (2%) of the invoice price to a wholesaler or retailer, before discounts.

(b)(1)(A) The taxes levied by this section and § 26-57-1101 shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(B) However, retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(2)(A) Any taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(i) Five percent (5%) of the total tobacco tax due for the first offense;

(ii) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(iii) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(B) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(3) The provisions of this subsection shall not affect the provisions of § 26-57-228.

(c) As provided in § 26-57-244, the Director of the Department of Finance and Administration may make a direct assessment of excise tax against any person in possession of untaxed tobacco products.

History. Acts 1997, No. 434, § 6; 1999, No. 1246, § 6; 2007, No. 817, § 8; 2013, No. 631, § 10.

Amendments. The 2013 amendment in (a), substituted "levied" for "imposed," substituted "that are offered for sale in" for "on the first sale to wholesalers or retailers within," and substituted "invoice price to a wholesaler or retailer, before discounts" for "manufacturer's selling price"; and deleted (a)(2).

26-57-1108. Appropriation from general revenue fund — Additional tax not collected.

(a) The taxes levied by this subchapter shall not be collected during any fiscal year for which the General Assembly has appropriated at least eight hundred thousand dollars ($800,000) from general revenues to the Breast Cancer Research Fund and at least three million two hundred thousand dollars ($3,200,000) of general revenues to the Breast Cancer Control Fund and funded those appropriations in Category A of the Revenue Stabilization Law, § 19-5-101 et seq., for that fiscal year.

(b) [Repealed.]

History. Acts 1997, No. 434, § 14; 2009, No. 655, § 95.

Amendments. The 2009 amendment deleted (b).

Subchapter 12 — Vending Devices Decal Act of 1997

Effective Dates. Acts 2011, No. 828, § 11: Oct. 1, 2011.

26-57-1206. Annual decal fee — Special decal — In lieu of sales tax.

(a)(1) Every person who is the operator of a vending device, who elects to have the operation of the vending device covered by the provisions of this subchapter, and who makes available to the general public for use and operation vending devices described in this subchapter shall pay to the Director of the Department of Finance and Administration for the benefit of the state and its municipalities and counties the following annual vending device decal fee for each vending device before the vending device may be placed in service within the state for use by members of the public:

(A) For each coin-operated vending device requiring a coin or thing of value of twenty-five cents (25¢) or more for a sale, ninety-three dollars ($93.00);

(B) For each coin-operated vending device requiring a coin or thing of value of less than twenty-five cents (25¢) for a sale, fifteen dollars ($15.00);

(C) For each coin-operated bulk vending device requiring a coin or thing of value of more than twenty-five cents (25¢) for a sale, seven dollars and fifty cents ($7.50);

(D) For each coin-operated bulk vending device requiring a coin or thing of value of twenty-five cents (25¢) or less for a sale, two dollars and fifty cents ($2.50); and

(E) For each coin-operated manually powered vending device, coin-operated tabletop snack vending device, or other coin-operated manually powered vending device requiring a coin or thing of value of twenty-five cents (25¢) or more for a sale, thirty dollars ($30.00).

(2)(A) After payment of the appropriate annual vending device decal fee, the annual vending device decal issued by the director shall bear on its face the year of its issue.

(B) The annual vending device decal must be affixed to each vending device in a place that is clearly visible to the user of the vending device before the vending device may be placed by the operator for public use or operation in this state.

(3) The annual vending device decal shall not be transferred from one (1) vending device to another, unless the person who is the operator of the vending device shall establish to the satisfaction of the director that the vending device to which the annual vending device decal is to be transferred is a vending device that is replacing the vending device to which the annual vending device decal was originally affixed.

(b) In those instances in which it is shown to the satisfaction of the director that a vending device upon which an annual vending device decal fee is otherwise due will be placed in service for use by members

of the general public for a definite period of time that is less than one (1) year, such as when the vending device shall be placed for public use in connection with fairs, carnivals, and places of amusement that operate only during certain seasons of the year, the director shall issue for those vending devices a special vending device decal and collect a special vending device decal fee computed as follows:

(1)(A) The special vending device decal may be issued for any number of thirty-day periods totaling less than a full year.

(B) The special vending device decal shall:

(i) State on its face that it is a special vending device decal, not an annual vending device decal;

(ii) Be for one (1) or more thirty-day periods;

(iii) State on its face the precise dates for which it has been issued; and

(iv) Not be transferred from one (1) vending device to another vending device;

(2) The special vending device decal fee shall be computed and paid by the person who is the operator of the vending device on the basis of one-fifth (⅕) of the annual vending device decal fee charged by this subchapter for the type of vending device operated, for each thirty-day period for which the special decal is issued; and

(3) In the event the vending device is made available to the public for a period beyond that for which the special vending device decal is issued, then a full year's fee and penalty, as set out in § 26-57-1206, shall be due on the vending device from the person who is the operator of the vending device.

(c)(1) The annual or special vending device decal fees required to be paid by subsections (a) and (b) of this section shall be paid by the person who is the operator of the vending device in lieu of the requirement that the person collect and remit the:

(A) State and local gross receipts or sales taxes levied pursuant to the provisions of the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., any provision of §§ 26-74-101 et seq. and 26-75-101 et seq., or any other provision of the Arkansas Code which provides for the levy of a local sales tax; or

(B) Special sales taxes levied pursuant to the provisions of § 26-57-1001 et seq.

(2) It is the intent of the General Assembly that gross proceeds or gross receipts shall not be subject to any state or local gross receipts or sales taxes imposed in this state when:

(A) The gross receipts or gross proceeds are received by a person who is the operator of a vending device from the sale of any item of tangible personal property through the vending device; and

(B) The annual or special vending device decal fee has been paid and the decal is affixed to the vending device.

(d) Any sales made by the operator of a coin-operated vending device that are made without the use of a vending device, for example, office coffee service, manual hot foods lines, catering events, and other similar

sales, shall be subject to the state and local gross receipts or sales taxes levied pursuant to the provisions of the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., any provision of §§ 26-74-101 et seq. and 26-75-101 et seq., or any other provision of the Arkansas Code that provides for the levy of a local sales tax.

(e)(1) For all vending devices that the operator does not elect to have covered by the decal fee provided by this section, the operator of that vending device shall acquire from the director an identifying decal that the operator shall affix to the vending device in a prominent place so as to establish to the consuming public that the vending device is not covered by the provisions of this subchapter.

(2) By reasonable regulations the director shall establish the amount to be charged for an identifying decal and the amount shall not exceed the cost of producing the identifying decals.

(f) An operator who elects to pay tax at the wholesale level and which has been issued an identification number by the Department of Finance and Administration as of March 31, 1997, shall be entitled to utilize that identification number for all vending devices owned by that operator.

History. Acts 1997, No. 928, § 6; 2003 (2nd Ex. Sess.), No. 107, § 9; 2005, No. 1962, § 115; 2009, No. 655, § 96.

Amendments. The 2009 amendment rewrote (b)(1).

26-57-1208. Distribution of revenue.

(a)(1) It is declared to be the purpose of this subchapter to provide revenues for general governmental functions of the state and its counties and municipalities, in lieu of the state and local gross receipts or sales taxes or vending device sales taxes that would otherwise be due and owing from the person who is the operator of a vending device.

(2) For that purpose and to that end, it is expressly provided that the revenue derived by the Director of the Department of Finance and Administration from the sale of annual or special vending device decal fees, including penalties, shall be deposited by the director into the State Treasury and credited as provided in subsection (b) of this section.

(b) The vending device decal fees imposed by § 26-57-1206 or any proportionate amount of the vending device decal fees shall be divided as follows:

(1) Eighty percent (80%) of the fees collected under § 26-57-1206(a)(1)(B)-(E) and sixty percent (60%) of the fees collected under § 26-57-1206(a)(1)(A) shall be deposited to the credit of the General Revenue Fund Account of the State Apportionment Fund provided by § 19-5-202;

(2) Twenty percent (20%) of the fees collected under § 26-57-1206(a)(1)(B)-(E) and fifteen percent (15%) of the fees collected under § 26-57-1206(a)(1)(A) shall be deposited by the Treasurer of State into the Identification Pending Trust Fund for Local Sales and Use Taxes under §§ 26-74-221, 26-75-223, and 26-82-113, and all revenues deposited into that fund shall be distributed to the cities and counties of this

state under §§ 26-74-221(a)(2)(C)(ii), 26-75-223(a)(2)(C)(ii), and 26-82-113(a)(2)(A)(ii); and

(3) Twenty-five percent (25%) of the fees collected under § 26-57-1206(a)(1)(A) shall be special revenues deposited by the Treasurer of State to the credit of the Educational Adequacy Fund.

History. Acts 1997, No. 928, § 8; 2003 (2nd Ex. Sess.), No. 107, § 10; 2011, No. 828, § 10.

Amendments. The 2011 amendment, in (b)(2), inserted "and 26-82-113" and added "and 26-82-113(a)(2)(A)(ii)" at the end.

Effective Dates. Acts 2011, No. 828, § 11: Oct. 1, 2011.

26-57-1209. Penalties.

(a)(1) Any person who is the operator of a vending device who places a vending device in use and operation, or in a place available to members of the general public for use and operation, without a valid and current annual or special vending device decal having been affixed thereto, as required by §§ 26-57-1204 and 26-57-1206, shall be liable for the decal fee on such vending device in the full amount of the applicable annual vending device decal fee, as levied by this subchapter, and such annual vending device decal fee shall be collected by the Director of the Department of Finance and Administration in accordance with the provisions of § 26-57-1204.

(2)(A) In addition to the annual vending device decal fee that is due on such vending device, the operator of the vending device who was responsible for failing to apply for and pay for the applicable annual vending device decal fee shall also be liable to pay the director a penalty which such person shall pay to the director and which the director shall assess against such person.

(B) The amounts of these penalties for failure to purchase and display the annual decal fee are to be paid by such operator, in addition to the applicable annual vending device decal fee, and such penalty shall be the larger of either twenty-five dollars ($25.00) per vending device, or an amount equal to eight (8) times the annual vending decal fee applicable to each such vending device.

(b) Upon conviction, a person who is the operator of a vending device who places the vending device in operation in this state for use or operation by members of the general public without first attaching to the vending device a valid and current annual vending device decal or special vending device decal under this subchapter is guilty of a Class C misdemeanor for each vending device found not to have a valid and current annual vending device decal or special vending device decal under this subchapter.

History. Acts 1997, No. 928, § 9; 2009, No. 655, § 97.

Amendments. The 2009 amendment rewrote (b).

Subchapter 13 — Enforcement Enhancements

26-57-1302. Definitions.

(a) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol", "lights", "kings", and "100s", and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to or identifiable with a previously known brand of cigarettes.

(b) "Cigarette" has the same meaning as in § 26-57-260(4).

(c) "Director" means the Director of Arkansas Tobacco Control.

(d) "Licensee" means any person or entity who has been granted and holds a permit or license under § 26-57-215, including a wholesale cigarette license or permit, a wholesale tobacco license or permit, a salesperson's license or permit, a retail cigarette license or permit, a retail tobacco license or permit, or a dealer's license or permit.

(e) "Master Settlement Agreement" has the same meaning as in § 26-57-260(5).

(f) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(g) "Participating manufacturer" has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments to the agreement.

(h) "Qualified escrow fund" has the same meaning as that term is defined in § 26-57-260(6).

(i) "Tobacco product manufacturer" has the same meaning as that term is defined in § 26-57-260(9).

(j)(1) "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or indirectly through a distributor, retailer, or similar intermediary during the year.

(2) "Units sold" includes all nonparticipating manufacturer cigarettes that are required to be sold in a package bearing a stamp required under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

(k) "Wholesaler" means:

(1) Any person or entity who has been granted and holds a wholesale cigarette license or permit or a wholesale tobacco license or permit pursuant to § 26-57-215; and

(2) Any person or entity who as a retailer purchases tobacco products directly from a manufacturer or an unlicensed wholesaler or distributor and is therefore liable for reporting and paying taxes under § 26-57-211(a)(1)(B).

(l) "Importer" means the same as defined in § 26-57-203; and

(m) "Newly qualified nonparticipating manufacturer" means a nonparticipating manufacturer that has not previously been listed in the directory maintained by the Attorney General under § 26-57-1303.

History. Acts 2003, No. 1073, § 2; 2009, No. 785, § 31; 2011, No. 836, §§ 12, 13.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (c).

The 2011 amendment rewrote (j); and added (l) and (m).

26-57-1303. Certifications — Directory — Tax stamps.

(a) Certification.

(1) No later than April 30 each year, every tobacco product manufacturer whose cigarettes are sold in the state, whether directly or through a wholesaler, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the Attorney General a certification to the Attorney General certifying under penalty of perjury that as of the date of the certification the tobacco product manufacturer either:

(A) Is a participating manufacturer; or

(B) Is in full compliance with §§ 26-57-260 and 26-57-261, including all quarterly installment payments that may be required under § 26-57-1305(e).

(2)(A) A participating manufacturer shall include in its certification a list of its brand families.

(B) The participating manufacturer shall update the list required under subdivision (a)(2)(A) of this section thirty (30) calendar days before an addition to or modification of the participating manufacturer's brand families by executing and delivering a supplemental certification to the Attorney General.

(3) A nonparticipating manufacturer shall include in its certification:

(A) An electronic mail address and fax number to which notices from the Attorney General may be sent and a list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year; and

(B) A list of the nonparticipating manufacturer's brand families that have been sold in the state at any time during the current calendar year:

(i) Indicating by an asterisk any brand family sold in the state during the preceding calendar year but that is no longer being sold in the state as of the date of the certification; and

(ii) Identifying by name and address any other manufacturer of the brand families in the preceding or current calendar year.

(4) The nonparticipating manufacturer shall update the list required under subdivision (a)(3) of this section thirty (30) calendar days before an addition to or modification of the nonparticipating manufacturer's brand families by executing and delivering a supplemental certification to the Attorney General.

(5) The certification for a nonparticipating manufacturer shall further certify:

(A) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice thereof as required by § 26-57-1304;

(B) That the nonparticipating manufacturer:

(i) Has established and continues to maintain a qualified escrow fund; and

(ii) Has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund;

(C) That the nonparticipating manufacturer is in full compliance with §§ 26-57-260 and 26-57-261, this subchapter, and the rules promulgated under §§ 26-57-260 and 26-57-261 and this subchapter;

(D) The name, address, and telephone number of the financial institution with which the nonparticipating manufacturer has established the qualified escrow fund required under §§ 26-57-260 and 26-57-261 and the rules promulgated under §§ 26-57-260 and 26-57-261;

(E) The account number of the qualified escrow fund and any subaccount number for the state;

(F) The amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and the evidence or verification the Attorney General deems necessary to confirm the requirements of this subsection;

(G) The amount and date of each withdrawal or transfer of funds the nonparticipating manufacturer made from the fund or from any other qualified escrow fund into which it made escrow payments under §§ 26-57-260 and 26-57-261 and the rules promulgated under §§ 26-57-260 and 26-57-261;

(H)(i) That the nonparticipating manufacturer consents to be sued in the courts of the state for purposes of the Attorney General enforcing §§ 25-57-260 and 26-57-261, this subchapter, or the rules promulgated under §§ 26-57-260 and 26-57-261.

(ii) The consent to suit under subdivision (a)(5)(H)(i) of this section shall be demonstrated by the execution and submission of a consent-to-suit form prepared by the Attorney General, with proof of authority to consent and execute the form; and

(I)(i) In the case of a nonparticipating manufacturer located outside of the United States, that it has provided a declaration on a form prescribed by the Attorney General from each of its importers into the United States of any of its brand families to be sold in the state that

the importer accepts joint and several liability with the nonparticipating manufacturer for all escrow deposits due under § 26-57-261 and for all penalties assessed under § 26-57-261.

(ii) A declaration under subdivision (a)(5)(I)(i) of this section shall appoint for the declarant a resident agent for service of process in Arkansas under § 26-57-1304.

(6) A tobacco product manufacturer may not include a brand family in its certification unless:

(A) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year in the volume and shares determined under the Master Settlement Agreement; and

(B) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is its cigarettes for purposes of §§ 26-57-260 and 26-57-261.

(7) Subdivision (a)(6) of this section does not limit or otherwise affect the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of §§ 26-57-260 and 26-57-261.

(8) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other information relied upon for the certification for a period of five (5) years unless otherwise required by law to maintain them for a greater period of time.

(9) A tobacco product manufacturer shall include in its certification a statement that it holds a valid permit under 26 U.S.C. § 5713, as it existed on January 1, 2011, and shall provide a copy of the permit to the Attorney General upon request.

(10)(A) It is unlawful for a person to submit a certification required by this section that asserts the truth of any material matter that the person knows to be false or inaccurate.

(B) In addition to any other provision of law, the Attorney General may seek a civil penalty in an amount not to exceed ten thousand dollars ($10,000) against a person that violates this subsection.

(C) A civil penalty collected under this section is general revenue of the state.

(b) Directory of Cigarettes Approved for Stamping and Sale.

(1) Not later than the last business day of May of each year, the Attorney General shall develop and make available for public inspection and shall publish on the Attorney General's website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (a) of this section and all brand families that are listed in the certifications except as provided in this section.

(2) The Attorney General shall not include or retain in the directory described in this subsection (b) the name or brand families of any manufacturer that has failed to provide the required certification or

whose certification the Attorney General determines is not in compliance with subsection (a) of this section unless the Attorney General has determined that the violation has been cured to the satisfaction of the Attorney General.

(3) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory described in this subsection (b) if the Attorney General concludes in the case of a nonparticipating manufacturer that:

(A) An escrow payment required under §§ 26-57-260 and 26-57-261 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General;

(B) An outstanding final judgment, including interest on the judgment, for a violation of §§ 26-57-260 and 26-57-261 has not been fully satisfied for the brand family or the manufacturer; or

(C) The total nationwide reported sales of cigarettes on which federal excise tax is paid exceeds the sum of its nationwide reports under 15 U.S.C. § 376, as it existed on January 1, 2011, and any interstate reports by more than five percent (5%) of its total sales or one million (1,000,000) cigarettes, whichever is less, unless the nonparticipating manufacturer cures or satisfactorily explains the discrepancy within thirty (30) days after receiving notice of the discrepancy.

(4) A tobacco product manufacturer or brand family shall not be maintained in the directory described in this subsection (b) if the Attorney General concludes that:

(A) The tobacco product manufacturer knowingly sold cigarettes to a stamp deputy whose appointment and commission has been revoked by the Director of the Department of Finance and Administration under § 26-57-236;

(B) The tobacco product manufacturer or any of the tobacco product manufacturer's affiliates, sales entity affiliates, officers, or directors has pleaded guilty or nolo contendere to or been found guilty of a felony crime relating to the sale or taxation of cigarettes or tobacco products; or

(C)(i) The tobacco product manufacturer and the tobacco product manufacturer's brand families have been removed from the directory of another state based on acts or omissions that would, if done in this state, serve as a basis for removal from the directory maintained by the Attorney General under this section, unless the manufacturer demonstrates that its removal from the other state's directory was effected without due process.

(ii) A tobacco product manufacturer that is removed from the state directory under this subsection (b) shall be eligible for relisting in the directory described in this subsection (b) on the earlier of the date on which the tobacco product manufacturer cures the violation or the date on which the tobacco product manufacturer is reinstated to the directory in the other state.

(5) The Attorney General shall update the directory described in this subsection (b) as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this subchapter.

(6) Every wholesaler shall provide and update as necessary an electronic mail address to the Attorney General for the purpose of receiving any notifications as may be required by this subchapter.

(7)(A) The Attorney General may not remove the manufacturer or its brand families from the directory until at least fifteen (15) days after the manufacturer has been given notice of such an intended action.

(B) Notice under subdivision (b)(7)(A) of this section shall be sufficient and be deemed immediately received by a manufacturer if the notice is sent either electronically or by facsimile to an electronic mail address or facsimile number, as the case may be, provided by the manufacturer in its most recent certification filed under subsection (a) of this section.

(c) Prohibition Against Stamping, Sale, or Import of Cigarettes Not in Directory.

(1) It is unlawful for any person or entity to:

(A) Affix a tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family that the person or entity knows is not included in the directory maintained by the Attorney General pursuant to subsection (b) of this section; or

(B) Sell, offer, or possess in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family that the person or entity knows is not included in the directory maintained by the Attorney General pursuant to subsection (b) of this section.

(2) Persons and entities are deemed to have received notice that cigarettes of a tobacco product manufacturer or a brand family are not included in the directory maintained by the Attorney General pursuant to subsection (b) of this section at the time the Attorney General's website fails to list any such cigarettes in the directory or at the time the Attorney General removes the cigarettes from the directory.

(3) A person or entity purchasing cigarettes for resale shall not be in violation of this subchapter if:

(A) At the time of purchase the manufacturer and brand families of the cigarettes are included in the directory maintained by the Attorney General pursuant to subsection (b) of this section and the cigarettes are lawfully stamped and sold within twenty-one (21) days of the date the manufacturer and brand families were removed from the directory; or

(B)(i) In the case of a retailer, the cigarettes are sold or delivered to retail customers within twenty-one (21) days after receipt of delivery of such cigarettes from a wholesaler so long as the cigarettes in question were lawfully purchased from the same wholesaler and the twenty-one-day period has not expired.

(ii) Possession of cigarettes after the twenty-one-day day period in subdivision (c)(3)(B)(i) of this section has expired is a violation of subdivision (c)(1) of this section.

(4) No brand families may be purchased by or delivered to a wholesaler once the manufacturer and brand families are removed from the directory.

(5) Any manufacturer, wholesaler, or retailer selling cigarettes for resale of a manufacturer or brand family that has been removed from the directory maintained by the Attorney General pursuant to subsection (b) of this section shall notify the purchaser of such cigarettes of that fact at the time of delivery of the cigarettes.

(6)(A) Unless otherwise provided by contract or purchase agreement, a purchaser shall be entitled to a refund of the purchase price from the manufacturer, wholesaler, or retailer from whom the cigarettes were purchased of any cigarettes that are the product of a manufacturer or a brand family that has been removed from the directory maintained by the Attorney General pursuant to subsection (b) of this section.

(B) The Department of Finance and Administration may by rule provide for a refund of the price of tax stamps that have been lawfully affixed to cigarettes that may not be sold under this subsection.

History. Acts 2003, No. 1073, § 3; 2005, No. 384, § 2; 2009, No. 655, § 98; 2009, No. 785, § 32; 2011, No. 836, § 14.

Amendments. The 2009 amendment by No. 655, in (a)(3)(A), substituted "fax" for "facsimile" and inserted "and" at the end.

The 2009 amendment by No. 785 deleted "for sale" following "possess" in (c)(1)(B), inserted (c)(3)(B)(ii) and redesignated the remainder of (c)(3)(B) accordingly, inserted "and the twenty-one-day period has not expired" in (c)(3)(B)(i), and substituted "rule" for "regulation" in (c)(6)(B).

The 2011 amendment inserted present (a)(5)(H), (a)(9), (a)(10), (b)(3)(C), and (b)(4) and redesignated the remaining subdivisions accordingly; and deleted "Notwithstanding the provisions of this section, in the case of any nonparticipating manufacturer who has established a qualified escrow account pursuant to §§ 26-57-260 and 26-57-261 that has been approved by the Attorney General" at the beginning of present (b)(7)(A).

26-57-1304. Requirement for agent for service of process.

(a)(1)(A) As a condition precedent to having its brand families included or retained in the directory maintained by the Attorney General under § 26-57-1303(b), a nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process and any action or proceeding against it concerning or arising out of the enforcement of this subchapter and §§ 26-57-260 and 26-57-261 may be served in any manner authorized by law.

(B)(i) As an additional condition precedent to having its brand families included or retained in the directory described in § 26-57-1303(b), a nonparticipating manufacturer located outside of the

United States shall cause each of its importers into the United States of each of its brand families to be sold in the state to appoint and continually engage without interruption the services of an agent in this state in accordance with this section.

(ii) The obligations of a nonparticipating manufacturer imposed by this section with respect to appointment of an agent also apply to an importer with respect to the appointment of an agent.

(2) The service shall constitute legal and valid service of process on the nonparticipating manufacturer.

(3) The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to and to the satisfaction of the Attorney General.

(b)(1) The nonparticipating manufacturer shall provide notice to the Attorney General thirty (30) calendar days before the termination of the authority of an agent and shall provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five (5) calendar days before the termination of an existing agent appointment.

(2) If an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Attorney General of the termination within five (5) calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(c)(1) Any nonparticipating manufacturer whose cigarettes are sold in this state and who has not appointed and engaged an agent as required by this subchapter shall be deemed to have appointed the Secretary of State as the agent and may be proceeded against in courts of this state by service of process upon the Secretary of State.

(2) However, the appointment of the Secretary of State as the agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory maintained by the Attorney General pursuant to § 26-57-1303(b).

History. Acts 2003, No. 1073, § 4; 2011, No. 836, § 15.

Amendments. The 2011 amendment added (a)(1)(B).

26-57-1306. Penalties and other remedies.

(a) License Revocation and Civil Penalty.

(1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a licensee or permitee has violated § 26-57-1303(c) or any rule adopted under this subchapter, the Director of Arkansas Tobacco Control may revoke or suspend the licensee's licenses or permits pursuant to law and the Arkansas Tobacco Control Board's rules governing the procedure for revocation or suspension of the licenses or permits.

(2) Each tax stamp affixed to and each sale or offer to sell cigarettes in violation of § 26-57-1303(c) shall constitute a separate violation.

(3) For each violation the board may also impose a civil penalty in an amount not to exceed the greater of five hundred percent (500%) of the retail value of the cigarettes or five thousand dollars ($5,000) upon a determination of a violation of § 26-57-1303(b) or of any regulations adopted under this subchapter.

(b) Contraband and Seizure. Any cigarettes that have been sold, offered for sale, or possessed for sale in this state or imported for personal consumption in this state in violation of § 26-57-1303(c) shall be deemed contraband, and the cigarettes shall be subject to seizure and forfeiture as provided in § 5-64-505, and all of the cigarettes so seized and forfeited shall be destroyed and not resold.

(c) Injunction.

(1) The Attorney General may seek an injunction to restrain a threatened or actual violation of § 26-57-1303(c), § 26-57-1305(a), or § 26-57-1305(d) by a licensee and to compel the licensee to comply with those provisions.

(2) In any action brought under this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees.

(d) Unlawful Sale and Distribution.

(1) It is unlawful for a person to sell or distribute cigarettes or to acquire, hold, own, possess, transport, import, or cause to be imported, cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of § 26-57-1303(c).

(2) A violation of this subsection is a Class A misdemeanor.

(e) Deceptive and Unconscionable Trade Practice. A violation of § 26-57-1303(c) is a deceptive or unconscionable trade practice under § 4-88-101 et seq.

(f)(1) In addition to any other provision of law, the Attorney General may seek a civil penalty in an amount not to exceed five hundred dollars ($500) per day for the knowing failure of a wholesaler to timely or accurately comply with § 26-57-1305(a).

(2) A civil penalty collected under this section is general revenue of the state.

History. Acts 2003, No. 1073, § 6; 2009, No. 785, § 33; 2011, No. 836, § 16.

Amendments. The 2009 amendment, (a)(1), inserted "or permitee," substituted "rule" for "regulation," substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board," and deleted "and regulations" following "rules."

The 2011 amendment added (f).

26-57-1307. Miscellaneous provisions.

(a) Notice and Review of Determination.

(1) A determination by the Attorney General to not include or to remove from the directory a brand family or tobacco product manufacturer shall be subject to review by the filing of a civil action for prospective declaratory or injunctive relief.

(2) The Pulaski County Circuit Court shall have exclusive jurisdiction over the civil action.

(3) In authorizing the civil action, the state does not waive its sovereign immunity from claims for monetary relief, costs, or attorney's fees, and no such relief shall be recoverable in any such civil action.

(b) Applicants for Licenses. No person or entity shall be issued a license or permit or granted a renewal of a license or permit by the Director of Arkansas Tobacco Control unless the person or entity has certified in writing under penalty of perjury that the person or entity will comply fully with this subchapter.

(c) Dates. For the year 2003:

(1) The first report of wholesalers required by § 26-57-1305(a) shall be due thirty (30) calendar days after April 3, 2003;

(2) The certifications by a tobacco product manufacturer described in § 26-57-1303(a) shall be due forty-five (45) calendar days after April 3, 2003; and

(3) The directory described in § 26-57-1303(b) shall be published or made available within ninety (90) calendar days after April 3, 2003.

(d) Promulgation of Regulations. The Attorney General, the Arkansas Tobacco Control Board, and the Department of Finance and Administration may promulgate regulations necessary to effect the purposes of this subchapter.

(e) Recovery of Costs and Fees by Attorney General. In an action brought by the Attorney General to enforce this subchapter, the Attorney General shall be entitled to recover the costs of the investigation, expert witness fees, costs of the action, and reasonable attorney's fees.

(f) Disgorgement of Profits for Violations of Subchapter.

(1) If a court determines that a person or entity has violated this subchapter, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the Treasurer of State for deposit into the State Central Services Fund.

(2) Unless otherwise expressly provided, the remedies or penalties provided by this subchapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

(g) Construction and Severability.

(1) If a court of competent jurisdiction finds that the provisions of this subchapter and of §§ 26-57-260 and 26-57-261 conflict and cannot be harmonized, the provisions of §§ 26-57-260 and 26-57-261 shall control.

(2) If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this subchapter causes §§ 26-57-260 and 26-57-261 to no longer constitute a qualifying or model statute as those terms are defined in the Master Settlement Agreement, that portion of this subchapter shall not be valid.

(3) If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this subchapter is for any reason held to be invalid, unlawful, or unconstitutional, the decision shall not affect the validity of the remaining portions of this subchapter or any part of this subchapter.

(h) For each nonparticipating manufacturer located outside the United States, each importer into the United States of the nonparticipating manufacturer's brand families that are sold in the state has joint and several liability with the nonparticipating manufacturer for deposit of all escrow amounts due under § 26-57-261 and payment of all penalties imposed under § 26-57-261.

History. Acts 2003, No. 1073, § 7; 2009, No. 785, § 34; 2011, No. 836, § 17.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (b).

The 2011 amendment added (h).

26-57-1308. Bond.

(a) If a newly qualified nonparticipating manufacturer is to be listed in the directory maintained by the Attorney General under § 26-57-1303 or if the Attorney General determines that a nonparticipating manufacturer who has filed a certification under § 26-57-1303 poses an elevated risk for noncompliance with either § 26-57-1305 or §§ 26-57-260 and 26-57-261, the nonparticipating manufacturer and the nonparticipating manufacturer's brand families shall not be included in the directory unless the nonparticipating manufacturer or its United States importer that undertakes joint and several liability for the nonparticipating manufacturer's performance under § 26-57-1307 has posted a bond in accordance with this section.

(b)(1) The bond required under subsection (a) of this section shall be posted by corporate surety located within the United States in an amount equal to the greater of fifty thousand dollars ($50,000) or the amount of escrow the manufacturer in either its current form or predecessor form was required to deposit as a result of its previous two (2) calendar quarters sales in the state.

(2) The bond required under subsection (a) of this section shall be written in favor of the state and shall be conditioned on the performance by the nonparticipating manufacturer or its United States importer that undertakes joint and several liability for the manufacturer's performance under § 26-57-1307 of all of the nonparticipating manufacturer's duties and obligations under § 26-57-1305 or §§ 26-57-260 and 26-57-261.

(c) A nonparticipating manufacturer may be deemed to pose an elevated risk for noncompliance with this section if:

(1) The nonparticipating manufacturer or any affiliate thereof has underpaid an escrow obligation with respect to any state during the calendar year or within the past three (3) calendar years unless:

(A) The manufacturer did not knowingly or recklessly make an underpayment, and the manufacturer promptly cured the underpayment within one hundred eighty (180) days of receiving the notice of the underpayment; or

(B) The underpayment or lack of payment is the subject of a good faith dispute as documented to the satisfaction of the Attorney

General, and the underpayment is cured within one hundred eighty (180) days of entry of a final order establishing the amount of the required escrow payment;

(2) A state has removed the manufacturer, the manufacturer's brands or brand families, an affiliate of the manufacturer, or any of the affiliate's brands or brand families from the state's tobacco directory for noncompliance with the state's law during the calendar year or within the past three (3) calendar years; or

(3) A state has litigation pending against, or an unsatisfied judgment against, the manufacturer or any affiliate of the manufacturer for escrow, penalties, costs, or attorney fees related to noncompliance with state escrow laws.

(d) A newly qualified nonparticipating manufacturer may be required to post a bond under this section for the first three (3) years of the newly qualified nonparticipating manufacturer's listing or longer if the newly qualified nonparticipating manufacturer has been deemed to pose an elevated risk for noncompliance.

History. Acts 2011, No. 836, § 18.

Subchapter 14 — Tobacco Products Reporting Act

Effective Dates. Acts 2013, No. 1272, § 3: Sept. 1, 2013. Effective date clause provided: "This act shall be effective on and after September 1, 2013."

26-57-1401. Title.

This subchapter shall be known as the "Tobacco Products Reporting Act".

History. Acts 2011, No. 836, § 19.

26-57-1402. Legislative findings and intent.

(a) The General Assembly finds that:

(1) In 2009, the Office of the Inspector General of the United States Department of Justice concluded that tobacco diversion costs the federal and state governments approximately five billion dollars ($5,000,000,000) in revenue from unpaid taxes annually;

(2) The primary reason that tobacco diversion is profitable is the disparity among the states' excise taxes;

(3) Purchasing cigarettes in a state with low tax rates and illegally reselling the cigarettes in a state with high tax rates can yield enormous profits for the people engaging in the scheme; and

(4) As further recognized by the United States Department of Justice, the diversion of tobacco can occur anywhere in the supply chain, including diversion by manufacturers, wholesalers, and retail outlets.

(b)(1) This subchapter is intended to provide information to the Department of Finance and Administration, the Arkansas Tobacco Control Board, and the Attorney General regarding the sale, transfer, and shipment of cigarette, roll-your-own, and other tobacco products.

(2) With the data provided under this subchapter, the state will be in a better position to prevent tobacco diversion and prevent cigarettes from being sold to young people and an already addicted adult population.

History. Acts 2011, No. 836, § 19.

26-57-1403. Cumulative effect.

The reporting requirements of this subchapter are cumulative in nature and are not intended to replace the existing reporting mechanisms currently provided under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., and §§ 26-57-1303 and 26-57-1305.

History. Acts 2011, No. 836, § 19.

26-57-1404. Definitions.

As used in this subchapter:

(1) A term that is defined in §§ 26-57-203, 26-57-260, or 26-57-1302 means the same as defined in §§ 26-57-203, 26-57-260, or 26-57-1302; and

(2) "Federal returns" means all federal excise tax returns and all monthly operational reports on Alcohol and Tobacco Tax and Trade Bureau Form 5210.5, and all adjustments, changes, and amendments to the federal excise tax returns and monthly operational reports on Alcohol and Tobacco Tax and Trade Bureau Form 5210.5.

History. Acts 2011, No. 836, § 19.

26-57-1405. Report of cigarettes not on state directory.

(a) Within fifteen (15) days following the end of the month in which cigarettes were acquired, sold, possessed, transferred, or transported, a person that acquires, purchases, sells, possesses, transfers, transports, or causes to be transported in or into the state cigarettes of a manufacturer or brand family that are not on the directory of cigarettes

approved for stamping and sale maintained by the Attorney General under § 26-57-1303 shall:

(1) File a report on the form prescribed by the Attorney General; and

(2) Certify to the state that the report is complete and accurate.

(b) The report required under subsection (a) of this section shall contain the following information:

(1)(A) The total number of cigarettes.

(B) The following information shall be identified by name and number of cigarettes:

(i) The manufacturer of the cigarettes;

(ii) The brand family of the cigarettes;

(iii) In the case of a sale or transfer, the name and address of the recipient of the cigarettes;

(iv) In the case of an acquisition or purchase, the name and address of the seller or sender of the cigarettes; and

(v) Each state directory on which the manufacturer and brand family of the cigarettes are listed and each state for which the person is authorized to affix stamps;

(2)(A)(i) In the case of acquisition, purchase, or possession, the details of the person's subsequent sale or transfer of the cigarettes.

(ii) The following details shall be identified by name and number of cigarettes:

(a) The brand family of the cigarettes;

(b) The date of the sale or transfer;

(c) The name and address of the recipient;

(d) The number of stamps of each state other than Arkansas that the person affixed to the package containing the cigarettes;

(e) The total number of cigarettes contained in the package to which the person affixed a stamp from each state other than Arkansas;

(f) The manufacturer and brand family of the package to which the person affixed a stamp from any state other than Arkansas; and

(g) Within fifteen (15) days following the end of the month in which the sale or transfer was made, a certification that the person reported each sale or transfer to the taxing authority of each state other than Arkansas, including a copy of the reports attached to the certification.

(B) If the subsequent sale or transfer of the cigarettes is from Arkansas into another state in a package not bearing a stamp of the other state, the report described in this section shall also contain the information required under § 26-57-1405(b)(3); and

(3) Any further information that the Attorney General may require to assist the state in enforcing this subchapter, the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., §§ 26-57-260 and 26-57-261, and §§ 26-57-1301 — 26-57-1308.

(c) Reports required under this section are in addition to other reports required under this subchapter, the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., and §§ 26-57-261, 26-57-1303, and 26-57-1305.

(d) The Attorney General may share the information reported under this section with the taxing authority or law enforcement agency of Arkansas or another state or with any other entity permitted by the Attorney General to aggregate the data.

History. Acts 2011, No. 836, § 19.

26-57-1406. Manufacturer and importer reports.

(a) Within fifteen (15) days following the end of each month, each manufacturer and importer that sells cigarettes in or into the state shall:

(1) File a report on the form prescribed by the Attorney General; and

(2) Certify to the state that the report is complete and accurate.

(b)(1) The report required under subsection (a) of this section shall contain the total number of cigarettes sold by the manufacturer or importer in or into the state during the month.

(2) The following information shall be identified by name and number of cigarettes:

(A) The manufacturer of the cigarettes;

(B) The brand family of the cigarettes; and

(C) The purchaser of the cigarettes.

(3) A manufacturer's or importer's report under this section shall include cigarettes sold in or into the state through each sales entity affiliate, if any.

(c) No further report is required under this section with respect to cigarettes if:

(1) In the case of a manufacturer or importer, the manufacturer or importer timely submits to the Attorney General the required reports with respect to cigarettes under the Prevent All Cigarette Trafficking Act of 2009, Pub. L. No. 111-154, and certifies to the state that the reports are complete and accurate; or

(2) In the case of a wholesaler, the wholesaler timely submits the report required by § 26-57-265 to the Director of Arkansas Tobacco Control and the report separately lists the deliveries to retailers and other wholesalers in this state by cigarettes, roll-your-own, and other tobacco products.

(d) Upon request by the Attorney General, a manufacturer or importer shall provide a copy of each report that:

(1) Is similar to the report required under this section; and

(2) Was filed by the manufacturer or importer in a state other than Arkansas.

(e) Each manufacturer and importer that sells cigarettes in or into the state shall either:

(1) Submit the manufacturer's or importer's federal returns to the Attorney General within sixty (60) days after the close of the quarter in which the returns were filed; or

(2) Submit to the United States Department of the Treasury a request or consent under 26 U.S.C. § 6103(c), as in effect on January 1,

2011, authorizing the Alcohol and Tobacco Tax and Trade Bureau and, in the case of a foreign manufacturer or importer, the United States Customs and Border Protection, to disclose the manufacturer's or importer's federal returns to the Attorney General within sixty (60) days after the close of the quarter in which the returns were filed.

(f) The Attorney General may share the information reported under this section with the taxing authority or law enforcement agency of Arkansas or another state or with any other entity permitted by the Attorney General to aggregate the data.

History. Acts 2011, No. 836, § 19; 2013, No. 1272, § 2.

Amendments. The 2013 amendment rewrote (c).

Effective Dates. Acts 2013, No. 1272, § 3: Sept. 1, 2013. Effective date clause provided: "This act shall be effective on and after September 1, 2013."

26-57-1407. Out-of-state sales reports.

(a) Within fifteen (15) days following the end of each month, a person that sells cigarettes from Arkansas into another state shall:

(1) File a report on the form prescribed by the Attorney General; and

(2) Certify to Arkansas that the report is complete and accurate.

(b) The report required under subsection (a) of this section shall contain the following information:

(1)(A) The total number of cigarettes sold from Arkansas into another state by the person during the month.

(B) The following information shall be identified by name and number of cigarettes:

(i) The manufacturer of the cigarettes;

(ii) The brand family of the cigarettes; and

(iii) The name and address of each recipient of the cigarettes;

(2) The number of stamps of each state other than Arkansas that the person affixed to each package containing cigarettes;

(3) The total number of cigarettes contained in each package to which the person affixed a stamp from a state other than Arkansas; and

(4) The manufacturer and brand family of each package to which the person affixed a stamp from a state other than Arkansas.

(c)(1) If a person sells cigarettes during the month from Arkansas into another state in a package not bearing a stamp of the other state, the report required under subsection (a) of this section shall also include the following:

(A)(i) The total number of cigarettes contained in each package.

(ii) The following information shall be identified by name and number of cigarettes:

(a) The manufacturer of the cigarettes;

(b) The brand family of the cigarettes; and

(c) The name and address of each recipient of the cigarettes;

(B) The person's basis for belief that the state permits the sale of cigarettes to consumers in a package not bearing a stamp; and

(C) The amount of excise tax, use tax, or similar tax imposed on the cigarettes and paid by the person to the state on the cigarettes.

(2) A manufacturer or importer shall include the information described in subdivisions (c)(1)(B) and (C) of this section only as to cigarettes not sold to a person authorized by the law of the other state to affix the stamp required by the other state.

(d)(1) For a manufacturer or importer, the report required under this section shall include cigarettes sold from Arkansas into another state through a sales entity affiliate.

(2) A sales entity affiliate shall file a separate report under this section only to the extent that the sales entity affiliate sold cigarettes from Arkansas into another state that were not separately reported under this section by the affiliated manufacturer or importer.

(e) The report required under this section shall also include reports filed with the taxing authority of each state other than Arkansas into which the cigarettes were sold.

(f) The Attorney General may share the information reported under this section with the taxing authority or law enforcement agency of Arkansas or another state or with any other entity permitted by the Attorney General to aggregate the data.

History. Acts 2011, No. 836, § 19.

26-57-1408. Violations.

(a)(1) A manufacturer that fails to file a complete and accurate report required under this subchapter may cure the failure within thirty (30) days.

(2) If a manufacturer fails to fully cure a failure during the thirty-day period, the manufacturer and the manufacturer's brand families shall be removed from the directory of cigarettes approved for stamping and sale maintained by the Attorney General under § 26-57-1303.

(b)(1) A person that is not a stamp deputy or manufacturer that fails to file a complete and accurate report under this subchapter may cure the failure within thirty (30) days.

(2) If a person that is not a stamp deputy or manufacturer fails to fully cure a failure during the thirty-day period, the person is subject to a civil penalty of up to one thousand dollars ($1,000) per violation and is ineligible to hold any license, appointment, or commission of the state regarding cigarette sales for:

(A) Ninety (90) days for the first failure;

(B) One hundred eighty (180) days for the second failure; and

(C) One (1) year for the third and subsequent failures.

History. Acts 2011, No. 836, § 19.

26-57-1409. Rules.

The Attorney General shall promulgate rules necessary to implement this subchapter.

History. Acts 2011, No. 836, § 19.